

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No.
PU-22-391

TRANSCRIPT OF FORMAL HEARING

March 14, 2023

APPEARANCES

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

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behalf of Applicant SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on
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John H. Warford, Jr. Revocable Trust

STEVE J. LEIBEL, Knoll Leibel LLP, on behalf of
Intervenors Dean Twardoski, et al

KEVIN PRANIS, on behalf of Intervenor Laborers
District Council of Minnesota and North Dakota (LIUNA)

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Advisory Counsel to the Public Service Commission

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1 ADMINISTRATIVE LAW JUDGE HOGAN: All right. My
2 clock shows it's 8:31 so we are going to get started.

3 Good morning. My name is Hope Hogan and I'm the
4 administrative law judge that's been designated upon the
5 request of the Public Service Commission to serve as the
6 hearing officer for today's hearing. It's March 14th,
7 2023. This is the time, date, and place set by a notice
8 of filing and notice of hearing issued by the North
9 Dakota Public Service Commission on May 17, 2023, for a
10 hearing in the case designated as Case No. PU-22-391.
11 This hearing is being held today at the Russell Reid
12 Auditorium at the North Dakota Heritage Center in
13 Bismarck, North Dakota.

14 As we begin today, I would ask everyone to
15 please check your cell phones and make sure they're
16 either silenced or turned off so that we don't have any
17 cell phone interruptions as we proceed today.

18 There is an attendance sheet that's being passed
19 around right now. The Commission would ask that
20 everyone please sign the attendance sheet so that they
21 have a record of everybody that appeared for today's
22 hearing.

23 This is the first of four hearings scheduled
24 regarding an October 17th, 2022, application of SCS
25 Carbon Transport LLC for a certificate of corridor

1 compatibility and route permit concerning an approximate
2 320 miles of carbon dioxide pipeline ranging from 4.5 to
3 24-inch diameter and associated facilities in Burleigh,
4 Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver,
5 Richland, and Sargent counties, North Dakota.

6 The notice of filing and notice of hearing
7 specified the following issues to be considered
8 concerning the application for waiver of procedures and
9 time schedules:

10 Number one. Are the proposed facilities of such
11 length, design, location, and purpose that they will
12 produce minimal adverse effects and that adherence to
13 applicable procedures, requirements, and time schedules
14 may be waived?

15 And number two. Is it appropriate for the
16 Commission to waive any procedures, requirements, and
17 time schedules as requested in the application?

18 Concerning the application for certificate of
19 corridor compatibility and route permit, the issues to
20 be considered are:

21 Number one. Will the construction, operation,
22 and maintenance of the facility at the proposed location
23 produce minimal adverse effects on the environment and
24 upon the welfare of the citizens of North Dakota?

25 Number two. Is the proposed facility compatible

1 with environmental preservation and the efficient use of
2 resources?

3 And, finally, number three. Will construction,
4 operation, and maintenance of the facility at the
5 proposed location minimize adverse human and
6 environmental impact while ensuring continuing system
7 reliability and integrity and ensuring that energy needs
8 are met and fulfilled in an orderly and timely fashion?

9 I will now have the parties make their
10 appearance for the record.

11 Mr. Bender, if you want to state your appearance
12 for the record and introduce the witnesses you intend to
13 call to testify today.

14 MR. BENDER: Thank you, Your Honor.

15 Lawrence Bender, PO Box 1855, Bismarck, North
16 Dakota, appearing on behalf of the Applicant, Summit
17 Carbon Solutions Transport LLC.

18 At the present time we plan on calling James
19 Powell as a witness in this matter. We will also be
20 calling Erik Schovanec and also Mr. Jon Schmidt.
21 There's a possibility that we may have two other
22 witnesses depending on how the questions go. The other
23 two witnesses -- or other three witnesses, excuse me,
24 would be Mr. Brigham McCown, Mr. Micah Rorie, and Mr.
25 John Godfrey.

1 ALJ HOGAN: Thank you.

2 Mr. Pelham, do you want to state your appearance
3 for the record and introduce Commission staff who's
4 appearing and participating with you today?

5 MR. PELHAM: Thank you, Your Honor. Good
6 morning. Zachary Pelham, special assistant attorney
7 general advisory counsel to PSC. To my left is Victor
8 Schock, who's a public utilities analyst. Mr. Schock
9 may have some questions today and we ask that he be
10 permitted to ask questions as well.

11 ALJ HOGAN: All right. Thank you.

12 MR. BENDER: And, Your Honor, I don't have any
13 objection to staff members asking questions.

14 ALJ HOGAN: All right. Thank you.

15 We also have three intervenors for this case.

16 I'll start with you, Mr. Bakke. Would you like
17 to state your appearance for the record and introduce
18 your client and identify any witnesses you intend to
19 call today?

20 MR. BAKKE: Yes, Your Honor. I'm Randy Bakke
21 and I represent John Warford, who is seated here to my
22 right. He is the former mayor of the City of Bismarck
23 and a landowner affected by the proposed Summit
24 pipeline.

25 Also with me here today is my legal assistant,

1 Lori Steckler.

2 I plan on calling at least four to five
3 witnesses, which will be John Warford, Chad Moldenhauer,
4 who is the owner and developer of a property called
5 Heritage Reserve. Also Brian Bitner who is a Burleigh
6 County commissioner, Curtis Jundt who is an engineer and
7 an interested party because his land is affected,
8 possibly Steve Bakken who is the former mayor, depending
9 on his availability and time constraints.

10 ALJ HOGAN: All right. Thank you.

11 Mr. Leibel, do you want to introduce or make
12 your appearance for the record, introduce your client,
13 and identify any witnesses you intend to call today?

14 MR. LEIBEL: My name is Steve Leibel. I
15 represent a number of intervenor affected landowners. I
16 won't list all 17, but the witnesses that we intend to
17 call today would be Rachell Herbel who's an affected
18 landowner, Pam Schonert who's an affected landowner, Lon
19 and Roberta Klusmann who are affected landowners, as
20 well as Marilyn Bryant who's also an affected landowner.

21 ALJ HOGAN: All right. Thank you.

22 And I do not see our third intervenor in this
23 case, which is --

24 MR. PELHAM: Yes. I don't mean to interrupt,
25 ALJ Hogan. I did speak with a representative,

1 Mr. Pranis, the -- of LIUNA, and he indicated they will
2 not have someone present at counsel table but they may
3 be calling a witness at a later time.

4 ALJ HOGAN: Thank you for that, Mr. Pelham.

5 By a show of hands, is there anyone present in
6 the audience who may testify or comment during our
7 public testimony portion of this hearing? All right.
8 Thank you.

9 Testimony from the public will be taken after
10 the completion of the parties' testimony. Expect that
11 will be at least mid afternoon, if not later today. I
12 encourage you to take the opportunity to tell the
13 commissioners anything you think the Commission should
14 know about this matter. Because of the number of
15 witnesses we do have that will be testifying today, I
16 would ask that any public testimony be limited to the
17 construction and the effect of this pipeline, and in
18 particular the corridor -- the portion of the pipeline
19 or the pipeline corridor we're here to discuss today.
20 I'd also ask that public commenters do not repeat
21 concerns that have previously been stated, especially by
22 someone similarly situated. If the point has been made,
23 the Commission will consider it.

24 Depending on the amount of people who wish to
25 testify, I may limit duration of public testimony today.

1 The goal is to have a safe and orderly hearing today in
2 which many voices are given the opportunity to be heard.
3 As that attendance sheet or sign-in sheet is being
4 passed around, I'd ask that you please mark "yes" if you
5 do wish to testify today so that I have a better idea of
6 how many people wish to provide testimony. Further
7 instructions regarding public testimony will be given
8 when we get to that portion of our hearing today. And
9 if you have any questions about public testimony, please
10 do not hesitate to talk to me during one of our breaks
11 today.

12 MR. BENDER: Your Honor, with respect to the
13 public testimony, may I suggest that when we get to that
14 point, that you allow maybe one person to speak for and
15 then alternatively one against it, back and forth,
16 rather than just randomly?

17 ALJ HOGAN: Yep. I have an order that we'll try
18 to stick to when we go through that.

19 MR. BENDER: Okay. Thank you. Appreciate that.

20 ALJ HOGAN: All right. We'll now have opening
21 comments from the commissioners.

22 Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Good morning, Judge,
24 and everyone else in attendance.

25 A few things that I'd just like to cover on

1 these things. First of all, we welcome you all. One of
2 the things that really bothered me the first siting
3 hearing or two that we did when I joined the Commission
4 years ago was that we hold up the public for hours
5 letting the company talk and they were being paid to be
6 here. And especially this time of year, some of you
7 maybe have calves to be born or cows to feed at least.
8 And why do we hold them up? And I had it explained to
9 me, and it makes a lot of sense, because it's important
10 that when we hear your testimony, it's valuable to us
11 and we want it to be as useful as possible, and it's
12 important that you testify on the application as it's in
13 front of us, which is going to be described in the
14 coming hours. And so that's why we don't take the
15 public comments at the beginning, because you would be
16 commenting on what you heard is going to be the case
17 rather than what's presented this morning.

18 We're going to focus, as Judge Hogan said, on
19 Burleigh, Morton, and Oliver counties at this hearing.
20 We have three more of these coming up.

21 Your Honor, I would ask you to maybe consider
22 throughout the morning, because we have so many
23 intervenors compared to normal, while it's important for
24 the company to explain their plan first, might we be
25 able to take, after they're done, maybe take some public

1 comment, do an intervenor, some more public -- kind of
2 mix it up a little bit? Something to consider --

3 ALJ HOGAN: Sure.

4 COMMISSIONER CHRISTMANN: -- for you. And
5 you've done a great job of hearing our cases before so I
6 trust you to make that call.

7 I want to emphasize that our goal, or at least
8 my goal, is not to construct a project or to obstruct a
9 project. Our goal is to be thorough and fair and follow
10 the law. And sometimes I don't like what the law
11 requires me to do, but I follow the law on these
12 decisions.

13 There's been a lot of discussion about eminent
14 domain in the press. That isn't something that's really
15 at play so much in our hearing here. This isn't about
16 the sequestration field. Our jurisdiction ends where
17 this pipeline would meet the sequestration field. This
18 is about ensuring that if this project is built, that
19 it's built in a way that will produce minimal adverse
20 effects on the environment and the welfare of the
21 citizens. That's what the law requires.

22 We do our best to -- if we have plenty of good
23 information. That's why we don't just do one of these
24 over -- and hear from the company over in our offices.
25 We want to be out and hear from people. That's why

1 we're doing four of these, and spread out all the way
2 from Wahpeton to here, to make sure people have a
3 chance.

4 Lastly, Judge Hogan talked about some new,
5 modern protocols, I guess, like shutting your cell phone
6 off. I'm kind of old fashioned and I like to just
7 remind folks to respect some of the old traditions as
8 well. I would ask -- well, you mentioned staying on
9 point and avoiding repetition. It's nice when people
10 follow old protocols, where gentlemen remove caps and
11 hats when they're testifying, that we don't curse in
12 these hearings, we don't call each other names, we don't
13 boo or hiss or cheer or applaud when people are
14 testifying. All those things are the kinds of things
15 that just end up taking up time and delaying others who
16 want to testify. And that is what influences our
17 decision, is testimony and information.

18 With that, again I thank you for being here and
19 look forward to an interesting day.

20 ALJ HOGAN: Thank you.

21 Commissioner Haugen-Hoffart.

22 COMMISSIONER HAUGEN-HOFFART: Good morning,
23 everyone. I first have to say I'm very thankful I woke
24 up and it's not snowing so I had to move some snow this
25 morning.

1 But I'm impressed with the people who are here
2 and have a great interest. Administrative Judge Hope
3 outlined why we are here, what we have to review on this
4 case. Commissioner Christmann also had some valuable
5 inputs and -- but I just want to stress we have four
6 public hearings. This process takes some time.

7 After this, we don't make a decision regarding
8 the route for Burleigh, Morton. We evaluate the case on
9 its whole entirety, going to all these opening hearings
10 that we've scheduled. There's late exhibits that most
11 likely will agree -- be agreed upon to submit. As a
12 commissioner, we gather all that information. We
13 synthesize it. We work through maybe some working
14 sessions. We ask a lot more questions. So it is a
15 quite lengthy process that we go through. And I think
16 that's clear for people to understand that it's just not
17 after every opening hearing we make a decision based on
18 the route in that county.

19 So there's a lot of information that's been out
20 there, some that I would say is truth, some that I would
21 say needs to be cleared up. I hope the company clears
22 up some of it and I hope, if not, we as staff -- our
23 staff can clear some of that up, but we're going to have
24 a lot of questions because we're seeking to understand
25 the jurisdiction in which we are responsible and apply

1 to the law.

2 So I thank you for being here. I look forward
3 to hearing from everyone. And, again, we can't stress
4 it enough that there's public interest in what's
5 happening in your community. Thanks for attending.

6 ALJ HOGAN: Thank you.

7 Mr. Dawson.

8 SUBSTITUTE DECISIONMAKER DAWSON: Good morning.
9 I'm Timothy Dawson. I am the director of the Office of
10 Administrative Hearings. I have sat as an
11 administrative law judge at dozens of Public Service
12 Commission hearings, much like Judge Hogan is doing
13 today. I am sitting today as the substitute
14 decisionmaker for Commissioner Fedorchak who recused
15 herself. I'm her replacement. You may refer to me as
16 "Mr. Dawson." Please do not refer to me as commissioner
17 or judge or substitute decision-maker. And that's a
18 mouthful. "Mister" will do.

19 Besides sitting as a judge in commission
20 hearings on a regular basis, I have worked for the North
21 Dakota legislature for about 20 years with portfolios in
22 energy, water, property, and natural resources. So I am
23 more than familiar with the laws and regulations
24 relating to pipeline siting. I'm honored to be chosen
25 to be here today, and thank you for coming.

1 ALJ HOGAN: Thank you.

2 I'd now like to discuss exhibits for this
3 hearing. Mr. Bender, can you tell me how many exhibits
4 you were going to offer today?

5 MR. BENDER: Yes, Your Honor. What we plan on
6 doing is offering two exhibits. One exhibit is the
7 application, which has been filed with the Commission
8 and I provided you, Your Honor, with a copy of that.
9 The official Exhibit 1 is on the table there where the
10 witnesses will be presenting their testimony.

11 ALJ HOGAN: And are they labeled 1 and 2? Is
12 that correct?

13 MR. BENDER: Yes.

14 ALJ HOGAN: Okay.

15 MR. BENDER: Well, I didn't tell you what
16 Exhibit 2 is.

17 ALJ HOGAN: Oh. Go ahead.

18 MR. BENDER: Exhibit 1 is the application. And
19 Exhibit 2 is a certificate of order document. That's a
20 document that the Commission typically requires in these
21 sorts of hearings. That was executed by my client
22 yesterday. I provided Mr. Pelham with a copy yesterday,
23 but the Exhibit 2, which is the original, is at the
24 witness table, and I also provided you, Your Honor, with
25 a copy of it as well.

1 ALJ HOGAN: All right. Thank you.

2 Mr. Pelham, any objection to those exhibits?

3 MR. PELHAM: No, Your Honor.

4 ALJ HOGAN: And Mr. Bakke?

5 MR. BAKKE: No, Your Honor.

6 ALJ HOGAN: Mr. Leibel?

7 MR. LEIBEL: No, Your Honor.

8 ALJ HOGAN: And, Mr. Pranis, I see you've joined
9 us now. Good morning.

10 MR. PRANIS: Your Honor, no, Your Honor.

11 ALJ HOGAN: All right. So Exhibits 1 and 2 will
12 be admitted into the record.

13 Mr. Pelham, the Commission is not offering any
14 exhibits today; is that correct?

15 MR. PELHAM: We don't plan to offer any,
16 correct.

17 ALJ HOGAN: All right. And, Mr. Bakke, can you
18 briefly outline the exhibits you plan to offer?

19 MR. BAKKE: Yes. So we have marked as exhibits
20 100 through 158 exhibits. I will tell you that exhibits
21 124, 125, 126, and 133 are not there. They were just
22 placeholder numbers we used. So it would be a total of
23 54 exhibits. I have provided to you and to the other
24 parties here today and to the commissioners a copy of
25 all those exhibits with an index describing each of

1 those exhibits.

2 ALJ HOGAN: All right. And I'll just --

3 MR. BAKKE: So I'll be offering all of those.

4 ALJ HOGAN: I'll just ask all the parties if
5 they're willing to stipulate to admission now.

6 Mr. Bender?

7 MR. BENDER: I haven't had an opportunity to
8 review them, Your Honor, but just paging through them
9 quickly, I don't believe I have a problem with any of
10 the exhibits.

11 ALJ HOGAN: All right. And Mr. Pelham?

12 MR. PELHAM: Your Honor, the only -- I did
13 briefly review. I don't -- I tend to agree with
14 Mr. Bender. I don't believe that I'll have any
15 objections with the possible exception, there's a
16 statement, just generally a statement. It's
17 Exhibit 122. Ordinarily, you know, that would be
18 something that someone would testify to, and I don't
19 know if that person is planning on being here to
20 testify, so I guess I would reserve as to 122.

21 MR. BENDER: You say, Mr. Pelham, 1.2 or --

22 MR. PELHAM: 122.

23 MR. BENDER: 122. Okay. Thank you.

24 MR. PELHAM: Yep.

25 ALJ HOGAN: All right.

1 MR. BAKKE: And, Your Honor, Exhibit 122 is a
2 statement from a local developer and businessman, Chad
3 Wachter, opposed to the Summit pipeline location. He is
4 unavailable because he is in Arizona right now and will
5 not be returning until next week so that's why, in lieu
6 of having him here today, we submitted that statement
7 from him.

8 MR. PELHAM: And, Your Honor, my only issue with
9 that is that ordinarily there would be the opportunity
10 for cross-examine. There would not be the opportunity
11 for cross-exam on that exhibit. That's the basis of my
12 reservation on that particular exhibit.

13 ALJ HOGAN: Okay. And, Mr. Leibel, any
14 objection to the exhibits?

15 MR. LEIBEL: No objection.

16 ALJ HOGAN: Okay. I will admit all those
17 exhibits except for 122 and I will review that later
18 today and will address the exhibit at a later time
19 today.

20 And then, finally, Mr. Leibel, do you have any
21 exhibits today?

22 MR. LEIBEL: Judge, we only have three pages,
23 which is three pages of a subdivision concept plan for
24 one of the affected pieces of property. I have labeled
25 those I-200, I-201, and I-202. I have not provided a

1 copy to counsel yet. I will have a witness to lay
2 foundation and discuss this during our hearing today.

3 ALJ HOGAN: Okay. So we'll wait on your
4 exhibits then until your witness or witnesses testify.

5 And, Mr. Pranis, did you have any exhibits
6 today?

7 MR. PRANIS: No exhibits for this hearing.

8 ALJ HOGAN: All right. Then I will just ask if
9 there's any other preliminary matters we need to address
10 before we get started.

11 Mr. Bender, did you have any?

12 MR. BENDER: Nothing further on preliminary
13 comments.

14 ALJ HOGAN: Mr. Pelham?

15 MR. PELHAM: No, Your Honor.

16 ALJ HOGAN: Mr. Bakke?

17 MR. BAKKE: No, Your Honor.

18 ALJ HOGAN: Mr. Leibel?

19 MR. LEIBEL: No, Your Honor.

20 ALJ HOGAN: And Mr. Pranis?

21 MR. PRANIS: No, Your Honor.

22 ALJ HOGAN: All right. Then, Mr. Bender, did
23 you want to call your first witness?

24 MR. BENDER: I do. Mr. James Powell.

25 ALJ HOGAN: Good morning. Can I have you start

1 by stating your full name and spelling your last name
2 for the record.

3 JAMES POWELL: Good morning. My name is James
4 Powell, spelled P-O-W-E-L-L.

5 ALJ HOGAN: And before you testify this morning,
6 Mr. Powell, I'm required by law to advise you on the
7 penalties for perjury in the state of North Dakota.

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

11 Do you understand what perjury is?

12 JAMES POWELL: Yes.

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

16 JAMES POWELL: I do.

17 ALJ HOGAN: All right. Thank you.

18 Go ahead, Mr. Bender.

19 MR. BENDER: Thank you, Your Honor.

20 **JAMES POWELL,**

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

23 DIRECT EXAMINATION

24 BY MR. BENDER:

25 Q. Mr. Powell, can you state your full name for the

1 record, please?

2 A. Yes. It's James Ernest Powell.

3 Q. But you go by "Jimmy"; is that correct?

4 A. Correct.

5 Q. By whom are you employed?

6 A. Summit Carbon Solutions.

7 Q. In what capacity?

8 A. The chief operating officer.

9 Q. Could you briefly provide for the judge and the
10 commissioners your educational background and work
11 experience?

12 A. Sure. I have a degree in engineering from
13 Oklahoma State University. And my experience is
14 approximately 35 years in the oil and gas business,
15 predominantly midstream and upstream, predominantly
16 pipeline operations. So I've had the good fortune of
17 completing projects in various states of the United
18 States, deepwater Gulf of Mexico, South America, and the
19 Middle East, all pipeline and pipeline facilities
20 related.

21 Q. Okay. And you've worked for some pipeline
22 companies that have had some operations and probably
23 still do have operations in the state of North Dakota;
24 is that correct?

25 A. That is correct.

1 Q. And what are the names of those companies?

2 A. Hiland Partners. It was a private company that
3 had operations in the Williston area and where they were
4 acquired by Kinder Morgan in 2015.

5 Q. And you worked for Kinder Morgan as well?

6 A. I did. I worked for Kinder Morgan following
7 that acquisition.

8 Q. And how many years did you spend at Kinder
9 Morgan?

10 A. Approximately five.

11 Q. And what were some of your duties and
12 responsibilities at Kinder Morgan?

13 A. About two and a half years of that tenure was as
14 vice president of operations for their pipeline
15 organization. Kinder Morgan has five business streams.
16 One's gas pipelines, one's liquid pipelines. So I was
17 the vice president of operations for the liquid
18 pipelines. And the remainder of that tenure was as vice
19 president of projects and engineering for the same
20 business entity.

21 Q. And you indicated your position with Summit is
22 that you're the chief operating officer; is that
23 correct?

24 A. That's correct.

25 Q. And tell us, Jimmy, what are some of your

1 responsibilities as the chief operating officer with
2 Summit?

3 A. Well, Summit as a business is this project,
4 comprised of this project. And so as chief operating
5 officer, I'm accountable for the design and construction
6 and ultimately the operation of the project.

7 Q. Who will be the owner of this project?

8 A. Summit Carbon Transport LLC.

9 Q. Can you provide for us -- and keeping in mind we
10 have a lot of witnesses so if you can keep your answers
11 brief but still provide the Commission, Commission
12 staff, with enough information. Provide us with a brief
13 description of the project.

14 A. So the project essentially -- or conceptually
15 gathers CO2 from the fermentation process at 32 ethanol
16 plants as we sit here today. And they're located in
17 five states. One is the Tharaldson plant in Casselton,
18 North Dakota. That CO2 is then compressed and
19 dehydrated into a super critical or dense state, and
20 then it is injected into a pipeline network that, as we
21 sit here today, is comprised of approximately 260 miles.
22 And as Judge Hogan said, it's 4-inch to 24-inch. And
23 then that pipeline network terminates at sequestration
24 or pore space that is located in Oliver and Mercer
25 counties, North Dakota. And at those locations the CO2

1 will be injected and permanently stored and sequestered
2 subsurface.

3 Q. And what will be the volume of CO2 that you'll
4 be transporting?

5 A. The pipeline network is designed for 18 million
6 tons, and currently we have approximately nine and a
7 half million tons under contract.

8 Q. Okay. Let's talk a little bit about the purpose
9 and need for the project. Can you help us with that?

10 A. I can. So as I think as the commissioners
11 probably know, our parent company is an
12 agricultural-based company that's been in business since
13 the '90s in Iowa. They have a background in alternative
14 energy as well, having owned and operated ethanol plants
15 in the state of Iowa in the early 2000s, and they
16 currently own and operate ethanol plants in South
17 America today. And so, conceptually, the thought was to
18 try to support the agricultural industry in all five
19 states and the ethanol industry as well in those states.
20 And then an added benefit is obviously, if you're
21 pulling the CO2 off the fermentation process from
22 ethanol plants, you're preventing those -- preventing 18
23 million tons of greenhouse gas emissions from entering
24 the atmosphere.

25 So really it's supporting agriculture and the

1 demand for corn products. It's supporting the ethanol
2 industry. And it's also helping those ethanol plants
3 reduce their carbon intensity scores so they can be
4 competitive on the West Coast of the United States and
5 other states that may enact low-carbon fuel standards.

6 Q. And tell us about the schedule of the project
7 and the cost of the project?

8 A. The cost of the project currently is about \$5.5
9 billion in total. That's capture facilities, pipeline
10 facilities, and sequestration facilities. The schedule
11 is -- depending on the receipt of permits, the schedule
12 would be to start construction later this year for --

13 UNIDENTIFIED SPEAKER: (Inaudible).

14 A. -- if we're fortunate to receive a permit from
15 the North Dakota Public Service Commission, and then
16 complete the project late next year and put it into
17 service either late next year or very early 2025.

18 Q. If this project receives approval from the PSC
19 and other governmental entities, what will Summit be
20 doing in terms of providing public awareness of the
21 project?

22 A. Well, we've -- we're required by PHMSA, by
23 federal regulations, to develop a public awareness
24 program. And we've begun that effort. We have
25 personnel on staff that are professionals in emergency

1 response and emergency planning and preparedness, and
2 those individuals have -- or that individual, excuse me,
3 has been active over the last year and a half talking to
4 emergency responders and emergency planners throughout
5 the five states and North Dakota in preparation.

6 As we get closer, as we move into construction
7 and get closer to operation, then we'll have more formal
8 training sessions with first responders to make sure
9 that they're prepared, once we go into operation, to
10 respond. In the unlikely event we have -- we have an
11 incident, they'll be prepared to respond.

12 And then respect -- regarding landowners and
13 property owners, we've made a commitment to those
14 landowners that we've signed agreements with that we'll
15 keep them informed, and so we'll give them notification
16 along the process but especially before we plan to
17 commence construction on their property.

18 Q. Okay. So before you begin operations, Summit
19 will put into place an emergency response plan. Is that
20 a fair statement?

21 A. Yes.

22 Q. And what is an emergency response plan?

23 A. Emergency response plan is really a plan that
24 provides guidance and structure around response to an
25 incident. So it's a quick, effective, and

1 well-coordinated response.

2 Q. And what sort of coordination will Summit have
3 with local emergency responders to prepare for an
4 emergency in the unlikely event that that were to
5 happen?

6 A. Well, there will be training with local
7 responders all along the pipeline route. So in North
8 Dakota it's in all ten counties that the pipeline will
9 be located. We'll make sure that we understand what
10 training they have, what training they need, and then
11 what equipment that they have and what equipment that
12 they may need. And then those training sessions will be
13 ongoing. It won't be one time and then we never talk to
14 them again. That will be an annual, recurring effort.

15 Q. Will there be any monitoring systems that will
16 be put into place once the pipeline becomes operational?

17 A. There will.

18 Q. Can you tell us a little bit about those
19 monitoring systems?

20 A. Sure. So this pipeline system will be -- will
21 have a control center that's located -- the primary
22 control center will be located in Iowa. There will be a
23 backup control center. We haven't identified the
24 location of that yet at this point. But that control
25 center will monitor the entire pipeline network, and

1 that will be monitored continuously. So that's 365 days
2 a year, 24 hours a day. And then along the pipeline
3 there will be data collection points, and those will
4 include pressure, flow, and temperature, and they will
5 be located continuously along -- not continuously but at
6 various points along the pipeline.

7 That information then, via a SCADA system,
8 supervisory control and data acquisition system, will be
9 compiled back in -- will be transmitted back to the
10 control center, and we'll have individuals in the
11 control center that can monitor that continuously.

12 Q. Now, in addition to being able to monitor the
13 pipeline at the control center, does the control center
14 have any control over the operation of the pipeline such
15 as shutting it down, opening valves, closing valves?
16 And if it does, can you provide us just a brief
17 description of that?

18 A. Sure. So we will employ what's called a real
19 time transient model. And all that means is I -- I
20 spoke of the various indicators along the pipeline that
21 work that will feed back information to the control
22 center. And parallel, we'll have a hydraulic model that
23 has the same inputs around the operation. And so we'll
24 monitor that in parallel, and if we see a deviation in
25 the hydraulic model but we don't see a deviation in the

1 actual information coming in, then the controller can
2 investigate. And the controller has the responsibility
3 or -- "responsibility" is a good word but also the
4 ability to shut down any segment of the pipeline system
5 at any time that they feel that there's a risk.

6 And then also there will be pressure indicators
7 on either side of main line block valves. And in North
8 Dakota, I believe there's 28 main line block valves.
9 And if there's a pressure variance of a significant,
10 what we term as outside of normal operating conditions,
11 those valves will close automatically. So the
12 controller has the ability to close -- shut down the
13 pipeline system, but the pipeline can also shut down
14 automatically without controller intervention.

15 MR. BENDER: Your Honor, in my effort to try to
16 keep the hearing as brief as possible, I don't have any
17 more questions.

18 ALJ HOGAN: All right. Thank you.

19 Mr. Pelham.

20 MR. PELHAM: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. PELHAM:

23 Q. Good morning, Mr. Powell.

24 A. Good morning.

25 Q. I have some questions for you. You testified,

1 sir, that the capacity of the line is 18 million tons
2 and that there's 9.5 million tons under contract. Why
3 build such a large pipeline when there's only
4 9.5 million tons contracted?

5 A. Well, there are -- there are a lot of ethanol
6 plants in the Midwest in and around the footprint of
7 this project. And so our assumption, and I guess our
8 hope, is that other ethanol plants will see the value in
9 reducing their carbon intensity score so they can be
10 more competitive in a low-carbon fuel market and so we
11 want to make sure that we have the capacity to
12 accommodate additional customers.

13 Q. Are there any plans by the company to utilize
14 CO2 from other industries aside from ethanol plants?

15 A. Sure. So there will be opportunities for
16 post-combustion gathering or capture of CO2 from other
17 industry if that's available.

18 Q. Is that something that the company is currently
19 looking into at present?

20 A. Well, Mr. Pelham, I'm not the business
21 development person, but I'll tell you that I know we are
22 in conversations with various industries.

23 Q. I think you testified that the start of
24 construction was anticipated -- obviously, you know,
25 there's permitting that has to be, but you were planning

1 to commence construction later this year; is that right?

2 A. That's correct.

3 Q. As far as the first responders and the training,
4 you testified that the company is going to provide that
5 to the first responders. Can you be more specific as to
6 what the company would be doing for that type of
7 training?

8 A. Sure. So the -- for those -- this type of
9 training, we would actually have real -- not real but
10 simulated scenarios. So, for instance, you know,
11 there's a -- there's a third party line streak -- strike
12 on the pipeline. This much CO2 is being released. And
13 so what does that look like and how would you respond to
14 it?

15 Q. You mentioned equipment and ensuring that first
16 responders have the adequate equipment. What type of
17 equipment that would be required that would be different
18 for a CO2 release response from what first responders
19 would already have?

20 A. Well, most first responders are familiar with
21 CO2 because it's in some of their firefighting
22 equipment, but typical responses in a pipeline may
23 involve overland flow. So if it's a refined products or
24 crude oil pipeline, for instance, there will be overland
25 flow. There will be that in -- in this instance. So in

1 the unlikely event that we had a release, there will be
2 a dispersion of vapor, and so the equipment that would
3 be needed to essentially protect or cordon off the area.
4 So that may involve fresh air. That may involve CO2
5 sensors, equipment like that.

6 Q. You were asked about the emergency response
7 plan. And I'm wondering how the company is developing
8 that plan. Is the company in consultation with PHMSA?
9 As I understand, PHMSA is reviewing the current safety
10 protocols for CO2 lines. Is there a consultant process
11 that the company is doing with PHMSA at present as to
12 its emergency response plan?

13 A. Not at this time regarding emergency response,
14 Mr. Pelham, but we are working with the regional office
15 in Kansas City, and that PHMSA office has been very
16 active in reviewing technical deliverables for the
17 project like our control -- our fracture control plan,
18 things of that nature. I'm sure they will get involved
19 in reviewing emergency response plans, public awareness
20 plans, things of that nature at a later date. I'm not
21 speaking for them, but that's my experience.

22 Q. So the emergency response plan, would it be fair
23 to say that it's a work in progress?

24 A. We have a draft. That's correct.

25 Q. And as far as providing the Commission the

1 emergency response plan, does the company intend to do
2 that?

3 A. I have no objection to providing a plan. I will
4 -- I just will caution that pipelines, as you probably
5 know, are considered critical infrastructure and so
6 things like emergency response plans, dispersion models,
7 those types of things are confidential, but I have no
8 objection to providing that to the Commission.

9 MR. BENDER: And, Your Honor, if that was done,
10 if that was something that the Commission required, we
11 would likely protect -- we would likely request that the
12 matter or the documents be put under seal.

13 ALJ HOGAN: Okay.

14 Q. (BY MR. PELHAM) As far as the monitoring, you
15 testified as to the SCADA system and the individuals who
16 would be controlling -- rather, would be at the control
17 center monitoring the pressure monitoring and all of the
18 data coming in. Has that control center, does that
19 exist at present?

20 A. The control center does not exist. However, we
21 have built a simulator and we have built the SCADA
22 screens and then we have -- we have our control manager
23 on board. So we have the individual who will run the
24 control center itself. He's been on staff for about six
25 months. So that's well in the process. The SCADA

1 system is currently under design. The leak detection
2 system is currently under design. So normal course of
3 design prior to construction.

4 Q. And as far as the number of individuals who
5 would be employed at the control center, do -- will
6 there be a set number of individuals that will be
7 monitoring a specific area of the line? As this line is
8 proposed to cross five states, will there be specific
9 individuals monitoring the line in North Dakota?

10 A. That is correct.

11 Q. Do you know how many individuals will be
12 specifically monitoring lines in North Dakota?

13 A. I think there will be five modules, so there
14 would be one module or desk that is monitoring the lines
15 in North Dakota.

16 Q. And that's 24/7, 365 days a year?

17 A. That's correct. I will add, Mr. Pelham, that
18 that's individual controller, but there will be a
19 control supervisor on staff continuously as well.

20 Q. Mr. Powell, can you talk a little bit about the
21 process that the company has been involved with with any
22 conditional use permits for zoning purposes with either
23 townships or counties in North Dakota and where that --
24 where the status of conditional use permits is specific
25 as to Burleigh, Morton, and Oliver counties?

1 A. Mr. Pelham, I can speak generally to it. We
2 have another witness that is better versed than I am.

3 Q. Fair enough.

4 A. But, yes, we have -- just generally, we have a
5 staff that's been working for the last year across the
6 entire footprint but obviously in the ten counties in --
7 in North Dakota, and they've been working with the
8 county commissioners, planning and zoning, township
9 officials, etcetera, identifying what permits are
10 required, road crossing permits, conditional use
11 permits, etcetera. And so we've got those identified
12 and we're working through the process of applying.

13 Q. As to the emergency response plans, what happens
14 if the power goes out either in -- in North Dakota or at
15 the control center in Iowa? What are the backup plans
16 in that event?

17 A. Well, with the control center, we have backup
18 power so uninterruptible power source as a backup power.
19 And then if that fails, we have a backup control center.
20 So if there was a natural disaster at the primary
21 control center, the secondary control center will be
22 located in another location geographically. So unless
23 it's some enormous catastrophic event, we'll always have
24 one available. And then individually at -- at remote
25 locations for valves, etcetera, we have redundant

1 communication and redundant power sources.

2 Q. As far as the -- you mentioned, I think, you
3 believe there's 28 main line block valves in North
4 Dakota. Are those -- are those -- can those
5 automatically be closed?

6 A. Yes.

7 Q. All right. And so if the power goes off at the
8 source, what is the power source of those main line
9 valves in North Dakota?

10 A. So for critical valves, there's a solar with
11 battery backup. And those batteries have the capability
12 to cycle even the largest pipeline on the system is in
13 North Dakota, which is 24-inch. And so even those
14 batteries that are used for backup power have the
15 capability to cycle those valves multiple times. So if
16 we lose the hardware power that comes into the valve, we
17 have the solar and battery backup.

18 Q. As far as the inspection protocol for on the
19 ground, what is the plan of the company for inspection
20 of the line both internally and externally by walking
21 the line?

22 A. So during construction, we've had construction
23 managers on our team for over a year and they've been
24 embedded with our land acquisition team in the field,
25 working with landowners. I find it valuable, and I

1 assume most landowners find it valuable when -- when
2 someone who is there that not only can talk about their
3 easement but someone is there that can talk about the
4 construction process and how their property will be
5 disrupted and reclaimed. And so they've been embedded
6 there and they'll have -- when we go into construction,
7 we'll have a construction team that supports --
8 construction/inspection team that supports or embedded
9 with each spread and there will be craft inspectors for
10 coding and welding, etcetera. And so that will be the
11 inspection protocol during construction and operation,
12 which may have been where your question was pointed.

13 Then we'll have -- we'll follow PHMSA
14 regulations. So we'll run inline inspection tools, and
15 they will be done on a frequency not to exceed five
16 years. We'll have API 5L -- I mean -- I'm sorry -- API
17 570 above-ground inspection of piping. So we'll follow
18 all the regulatory required inspection protocol, whether
19 that's federal or state. That includes block valves
20 where we'll have to cycle the block valves at least
21 twice a year, etcetera.

22 Q. I saw on the application, Mr. Powell, that
23 American steel was going to be used for these pipelines.
24 Is that correct?

25 A. That is correct.

1 Q. So no steel from other countries, just American
2 steel; correct?

3 A. That's correct.

4 Q. As far as -- I asked you about automatic closing
5 valves. I assume that there are manually -- can be
6 manually closed as well; is that correct?

7 A. That is correct.

8 Q. What is the plan of the company for
9 on-the-ground employees of this line after the -- well,
10 assuming that the line is constructed, what is the plan
11 of the company to employ individuals in North Dakota and
12 where would those individuals be located at in the event
13 of maintenance issues, responding to repairs, or
14 emergency situations?

15 A. Yes. The current plan -- and I caution to say
16 it's preliminary, but the current plan is to have
17 approximately 150 affected employees in North Dakota, 35
18 of those being direct. The capture facility at
19 Tharaldson will have staff at that facility that's
20 accountable for operation of the compressors, etcetera.
21 And then we'll have staff that's permanently located at
22 the sequestration site and the surface facilities in
23 Oliver, Mercer counties.

24 And then along the pipeline we'll have an
25 operations -- road operations office along the pipeline,

1 probably toward the eastern side of North Dakota. I say
2 probably. It hasn't been pinpointed at this point. We
3 do have an office currently in Bismarck that will
4 remain.

5 And we'll have pipeline operators that are
6 spread out across the pipeline network. There's
7 approximately 330 miles of pipeline, including the
8 sequestration in North Dakota, so we'll make sure we
9 have coverage. And some of those individuals will be
10 primarily responsible for damage prevention and so their
11 primary responsibility is to actually drive the
12 pipeline, respond to 811 calls, etcetera. So they'll be
13 dispersed throughout the network.

14 Q. As far as who the company anticipates
15 constructing the line, has the company made any
16 decisions as to that?

17 A. We have. So we've executed contracts with two
18 pipeline construction contractors. One is Precision
19 Pipeline. That's a union contractor based in the Upper
20 Midwest. And the other is Pumpco, a sister company with
21 Precision under the umbrella of MasTec, and they are --
22 they are a Texas-based company. Those two companies
23 will construct the pipeline network in North Dakota.

24 Q. And can you tell the Commission a little bit
25 about the experience of these two contractors?

1 A. Yes. So both contractors are, in our
2 estimation, top-tier construction contractor -- pipeline
3 construction contractors. Both have constructed
4 hundreds of miles of pipeline in this part of the
5 country. Precision was one of the primary contractors
6 on the Dakota Access project. And Pumpco has
7 constructed pipelines in North Dakota as well.

8 So we've chosen contractors with very strong
9 safety records, demonstrated performance of being able
10 to effectively and efficiently install pipeline of this
11 nature, and companies that we worked with previously.

12 Q. In the construction process, can you tell the
13 Commission about how the company handles topsoil
14 separation?

15 A. So the -- we'll do what's called double ditch.
16 So the topsoil will be segregated from the subsoil and
17 it will be -- we'll remove the topsoil, we'll put that
18 on one side of the right of way. We'll remove the
19 subsoil and put it on the opposite side of the ditch on
20 the right of way. So that way they're totally separated
21 and we'll protect the topsoil in whatever method that we
22 agree to with that particular contractor until it's put
23 back -- spread back onto the right of way and -- and
24 permanently reclaimed.

25 Q. And as far as the depth of topsoil, does it

1 vary? Does the company vary the topsoil separation?

2 A. We try to remove all of the topsoil, identify
3 where that topsoil, subsoil interface is, try to remove
4 all the topsoil. Because especially if it's
5 agricultural use, as farmers have told me, that's where
6 a lot of their expense is, in that topsoil. So we'll
7 try to make sure that we totally separate the topsoil
8 and not mix the two. We'll put the subsoil back in the
9 ditch and then the topsoil on top.

10 Q. You talked about the topsoil separation plan for
11 the company. Can you tell us a little bit more about
12 the reclamation process that the company anticipates on
13 implementing?

14 A. Sure. So our promise is that we'll reclaim the
15 right of way to as near a condition as we found it as
16 possible. So that includes reseeding. And we'll reseed
17 with a, like, grass mix, and that's to the landowner's
18 satisfaction.

19 Q. Does the company anticipate winter construction
20 in North Dakota?

21 A. Depending on when we receive a permit, we do
22 have a plan to construct in the winter. We would remove
23 any topsoil. We would clear the right of way, remove
24 any topsoil prior to the winter construction if we were
25 to execute in the winter, because we feel that it's

1 prudent to remove the topsoil before it freezes. And if
2 we were able to do that, then, yes, we can -- we're
3 going to automatic weld the 24-inch, which is the main
4 line. So we can construct in the winter if we choose
5 to. We do have a plan to execute that if -- if the
6 timing presents us that opportunity.

7 Q. The application, Mr. Powell, talked a little bit
8 about above-ground facilities on the pipeline. Could
9 you tell us a little bit about the above-ground
10 facilities that are anticipated?

11 A. So the above-ground facilities will be block
12 valves, as I mentioned earlier. There will be pipeline
13 launchers and receivers at each diameter change, and
14 that's to -- that's to accommodate internal pigging.
15 And then there will be ultimately four pump stations
16 constructed in North Dakota, one with what we call a
17 phase one which is to accommodate the nine and a half
18 million tons, and that's in Richland County. And then
19 we'll have the sequestration facilities. So at the
20 sequestration sites, we anticipate having at least three
21 injection locations and we'll have surface facilities,
22 essentially pump stations, at each of those locations.

23 Q. I believe another witness is going to talk a
24 little bit more about those pump stations and any
25 impacts that noise may have. Are you able to comment on

1 that or is that best left for another witness?

2 A. I can comment generally. Yes, he's better
3 versed in it than I am, Mr. Pelham, but generally we
4 have conducted a noise study to identify what the noise
5 impacts would be at the facilities and to any adjacent
6 landowners to the facilities.

7 Q. Would you tell the Commission a little bit, Mr.
8 Powell, about the status of easement acquisition?

9 A. We also have another witness who could testify
10 in more detail, but generally to date we have about --
11 acquired about 64 percent of the right of way in North
12 Dakota and about 62 percent is within PSC jurisdiction,
13 the other 2 percent lies in the NDIC jurisdiction in the
14 pore space area. As I mentioned, there's about
15 330 miles total pipeline. About 320 of that is within
16 the PSC jurisdiction. And so we've acquired about
17 220 miles.

18 Q. So that percentage is percentage of mileage of
19 the pipeline in North Dakota; correct?

20 A. Yes, sir.

21 Q. Do you or another witness have as far as a
22 breakdown as to -- by county or anything like that?

23 A. We -- we do. I don't have that --

24 Q. Fair enough.

25 A. -- committed to memory, but we can provide that

1 today.

2 Q. Could you talk a little bit about residences
3 within 500 feet of the line and the status of acquiring
4 any waivers for those businesses, residences, or
5 schools?

6 A. Sure. So of the 330 miles, there were initially
7 ten locations that were within the 500-foot setback
8 limitation. We've -- with nine of those ten, we were
9 able to work with the landowner and relocate the
10 pipeline on their property but outside of the 500-foot
11 setback to their satisfaction. And with the tenth
12 landowner, we agreed to keep it as is, and that was at
13 their request, and we received a waiver from that
14 landowner.

15 Q. I assume the company will be filing that waiver
16 with the Commission at some point?

17 MR. BENDER: Yes.

18 MR. PELHAM: Okay. Thank you.

19 Q. (BY MR. PELHAM) I'm not sure if you're the
20 right witness for this, sir, but could you tell the
21 Commission a little bit about the impact on prime
22 farmland that the line would have?

23 A. If I understand your question correctly
24 Mr. Pelham, so if we -- if we remove -- if a crop is
25 planted and before we commence construction, then we'll

1 remove that crop along, you know, the width of the right
2 of way, both the permanent and the temporary work space.
3 We'll construct, we'll reclaim, and then the landowner
4 has the complete use of that right of way thereafter.
5 So they can replant over the full extent of the right of
6 way, even the 50-foot permanent right of way that we
7 require.

8 MR. PELHAM: Mr. Powell, I don't have any other
9 questions for you at this time. Mr. Schock may have
10 some.

11 MR. SCHOCK: I have no questions for this
12 witness.

13 ALJ HOGAN: Mr. Bakke.

14 MR. BAKKE: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BAKKE:

17 Q. Mr. Powell, just listening to your testimony, it
18 sounds to me like your testimony to the commissioners is
19 you think this pipeline, if it's built, will be safe?

20 A. I do.

21 Q. And you think there's going to be a number of
22 mechanisms built into the pipeline to assure that
23 safety?

24 A. Correct.

25 Q. Okay. What I didn't hear you talk about is the

1 risk of a leak from this pipeline; correct?

2 A. Correct.

3 Q. And I didn't hear you talk about what happens if
4 there is a leak; correct?

5 A. Correct.

6 Q. And I didn't hear you talk about what would
7 happen to people and animals if there is a leak?

8 A. Correct.

9 Q. Okay. Are you going to be presenting any of
10 that information to the commissioners here today?

11 A. I'm happy to discuss that.

12 Q. Okay. Let's discuss that.

13 Let me ask you, first of all, do you live in
14 Burleigh County?

15 A. I do not.

16 Q. Do you have property in Burleigh County?

17 A. I do not.

18 Q. Where do you live?

19 A. I live in Texas.

20 Q. Okay. And so would it be fair to say, if
21 there's a leak from the Summit pipeline, you won't be
22 impacted by that, correct, at least not personally?

23 A. As a landowner, I would not be impacted.

24 Q. Or an individual who lives here?

25 A. Correct.

1 Q. Okay. Let's talk a little bit more about your
2 background. Have you ever been involved in constructing
3 a CO2 pipeline?

4 A. I have not.

5 Q. Okay. Have you ever been involved in responding
6 to a CO2 leak?

7 A. I have not.

8 Q. Have you ever had any involvement in relation to
9 any incident involving a CO2 leak?

10 A. I have not.

11 Q. Okay. Has Summit ever built a carbon dioxide
12 pipeline before?

13 A. Summit has not built a carbon dioxide pipeline.

14 Q. Has Precision, the company you're contracting
15 with, ever built a carbon dioxide pipeline before?

16 A. Mr. Bakke, I'm -- I'm not sure whether Precision
17 has or has not.

18 Q. Okay. Well, as part of its due diligence to try
19 to select someone who would be the appropriate entity to
20 build the pipeline, wouldn't you want to find out
21 whether the company you're planning on hiring had prior
22 experience in building and designing CO2 pipelines?

23 A. Well, Mr. Bakke, I'm sure you know that CO2
24 pipeline, like crude oil pipelines, like refined product
25 pipelines, are all governed by PHMSA code 195 for liquid

1 pipelines. The design, construction, and operation is
2 very similar regardless of the commodity that you're
3 moving in the pipeline. So Precision, myself, and our
4 organization has extensive experience in constructing
5 and operating those types of pipelines.

6 Q. Okay. In all due respect, Mr. Powell, could you
7 answer my question? My question was wouldn't it be
8 advisable for Summit to find out whichever pipeline
9 company they're going to contact or consider for
10 building this pipeline should have prior experience with
11 carbon dioxide pipelines?

12 A. Mr. Bakke, as I just stated, a weld is a weld
13 whether it's on a pipeline that's going to transport
14 carbon dioxide or crude oil.

15 Q. Okay. Can you tell me, is it important for
16 Summit to be transparent with the public in regard to
17 any safety issues relating to the possible construction
18 of this Summit pipeline?

19 A. It is important to be transparent with the
20 public, the other interested party or stakeholder.

21 Q. Okay. And is it important for Summit to be
22 transparent with the Public Service Commission in
23 regards to any safety concerns regarding the Summit
24 pipeline?

25 A. Absolutely.

1 Q. Okay. And could you turn to the binder you have
2 in front of you which is the Warford exhibits? And I'd
3 like you to look at Exhibit 123.

4 A. Is it --

5 Q. I think your binder is on your right-hand side.

6 A. And it's, Mr. Bakke, which exhibit?

7 Q. Exhibit 123.

8 A. I have that.

9 Q. Okay. And before we talk about that, on that
10 topic of transparency, can you tell me how many
11 different routes Summit has proposed in Burleigh County
12 for the pipeline route so far?

13 A. Mr. Bakke, we have a witness that will testify
14 later this morning that is better versed than I in that,
15 but I -- but to my knowledge we've got two primary
16 routes. The original route and then a route that we
17 moved to the east, which is the current route.

18 Q. Okay. And maybe my question wasn't clear. Let
19 me ask it a different way. Has Summit changed the
20 proposed route through Burleigh County for the Summit
21 pipeline?

22 MR. BENDER: I'm going to -- I think the
23 question is vague and ambiguous. Are you talking about
24 small routes or are you -- changes or are you talking
25 about large route changes? I'm not -- I don't have any

1 objection to him answering the question, but I think you
2 have to be more specific with respect to what the
3 question is.

4 MR. BAKKE: Sure. I'll try to do that.

5 Q. (BY MR. BAKKE) What I'm trying to understand,
6 Mr. Powell, has there been changes in the pipeline
7 through Burleigh County in regards to whether it would
8 be on a certain landowner's property at one point and
9 then it got changed so it wasn't on their property or it
10 moved to a different location on their property?

11 A. Well, Mr. Bakke, we've employed approximately
12 600 route variances in the state of North Dakota, most
13 of those being micro route changes on landowners'
14 property. We've tried to be very diligent in working
15 with landowners. If we're traversing their property
16 diagonally and they prefer we follow the fence line,
17 we've done that. There was one reroute that was more
18 significant.

19 As I mentioned, we looked at the 2045 economic
20 development plan for the City of Bismarck and we looked
21 at the plan development in that area and we moved the
22 pipeline to the east. I don't have the exact mileage,
23 but it was a few miles to the east to try to get even
24 further. The original route was outside of that 2045
25 development plan. We moved it further east to get even

1 further removed from that.

2 Q. Well, are you aware that for John Warford's
3 property, there's been at least three changes in the
4 route that Summit has proposed?

5 A. I will tell you I'm not familiar exactly --
6 although I've met with Mr. Warford myself, I'm not
7 familiar with those exact changes. I will tell you that
8 we have -- when we make a change for a landowner, that's
9 at the landowner's request or, in North Dakota, as I'm
10 sure the commissioners are aware, there are a lot of
11 cultural features that are prohibitive. And so as we do
12 our environmental, our land and our cultural surveys, we
13 have to avoid those features. And that has -- that has
14 driven a lot of small reroutes. But with Mr. Warford's
15 property, I don't know directly what those reroutes were
16 but my assumption is they were at his request.

17 Q. Okay. And he's going to testify that they were
18 not at his request. Are you saying that's not true?

19 A. I'm not saying that's not true.

20 Q. Okay.

21 A. I'm saying I'm not familiar with it.

22 Q. Okay. Have you dealt with any landowners
23 individually in Burleigh County as to where the routes
24 may have changed on their property and when for the
25 pipeline?

1 A. I have dealt with several landowners in the
2 area, but forgive me, I may not have them right and as
3 far as which county they were in, but I've dealt with --
4 especially landowners on either side of the Missouri
5 River --

6 Q. Okay.

7 A. -- personally.

8 Q. We're aware, with John Warford's property, of at
9 least three changes in the route and on other properties
10 owners as well. Isn't it important for Summit to
11 publicize, put it out in the public when these changes
12 in the route occur so these affected landowners can
13 determine if and how it might affect their property?

14 A. Well, I think it's important that we work with
15 each individual landowner to determine how the pipeline
16 or any change may affect them individually. But as I
17 mentioned, we've employed over 600 route variances just
18 in the state of North Dakota. So to communicate 600
19 route variances to every landowner, I don't see the
20 value in that.

21 Q. Okay. So what you're saying is unless the
22 Summit pipeline is going to be directly on the property
23 of a specific landowner, Summit doesn't feel it needs to
24 let, as an example, adjacent landowners know by
25 publicizing that, where the route might be for the

1 Summit pipeline?

2 A. Well, Mr. Bakke, we couldn't afford that because
3 -- I mean, we couldn't avoid that. Because if we change
4 the route on Mr. Warford's property, it's going to
5 affect the entrance and exit of his property so it's
6 going to affect those adjacent landowners. So
7 absolutely we would communicate that.

8 Q. And when I say "adjacent landowners," I mean
9 ones where the pipeline is not being placed or proposed
10 to be placed by Summit. So you're saying that affected
11 landowners north, south, east, west, even though the
12 pipeline is not going on their property, that Summit has
13 an obligation to inform them?

14 A. Well, I'm saying there's multiple ways in which
15 we try to inform them. So we have personnel, we have
16 staff that attend every commissioner meeting in all ten
17 counties. So those are opportunities to get updates
18 from our team as to where the routing is. Individual
19 landowners can contact us at any time. We have land
20 agents in the field continuously. There's many ways.
21 We have information lines where you can call Summit's
22 main office and we'll be very responsive in
23 communicating any changes that are relevant to a
24 landowner. So, yes, we don't go knock on every
25 landowner's door that may be impacted within so many

1 miles of a change, but we are always available to share
2 information to the extent we can.

3 Q. Okay. So what you're saying is that it's the
4 landowner's responsibility to try to figure out where
5 Summit might plan to place the pipeline and if they're
6 moving that route in any way?

7 MR. BENDER: Objection. Mischaracterization of
8 his testimony.

9 ALJ HOGAN: Can you rephrase?

10 MR. BAKKE: Sure.

11 Q. (BY MR. BAKKE) Are you saying that it's the
12 landowner's responsibility to try to figure out where
13 Summit might plan to route the pipeline, and if there's
14 changes to that route, to try to figure out where and
15 when those might happen?

16 A. You're talking about landowners that the
17 pipeline is not traversing on their property.

18 Q. There are adjacent landowners to where the
19 pipeline is going to be placed.

20 A. I'm saying that when we're -- when we're routing
21 the pipeline and we're signing easements with
22 landowners, we would not overtly contact an adjacent
23 landowner. However, we're required to have a public
24 awareness program. So during construction or prior to
25 construction, we'll notify landowners in the area

1 because there may be heavier truck traffic in the area,
2 etcetera. And then obviously before we go into
3 operation, then we have a public awareness obligation.

4 So, yes, we would communicate with all what we
5 feel are impacted landowners in and around the pipeline
6 to ensure that we've answered any of their questions.

7 Q. Let's turn to Exhibit 123. This is a
8 publication issued in The Bismarck Tribune, perhaps
9 elsewhere, a few weeks ago by Summit; is that correct?

10 A. I'm sorry, could you repeat that, sir?

11 Q. Yes. Do you have Exhibit 123 in front of you?

12 A. 123. Yes. The Burleigh County meeting --
13 commission meeting minutes?

14 Q. No. 123 is an article, a publication that went
15 in the newspaper. It's W123.

16 ALJ HOGAN: Says "CO2 Pipelines Are Safe" at the
17 top of it.

18 A. Oh, I see. It's 122 in my book but --

19 Q. Did you pull it out already perhaps?

20 A. No, I didn't, but -- this is what you're
21 referring to?

22 Q. That's it.

23 MR. BENDER: Did you find it?

24 THE WITNESS: It's 122 in my book.

25 Q. Am I correct in understanding that's a

1 publication that Summit placed in The Bismarck Tribune a
2 few weeks ago?

3 A. Yeah, it looks to be. Yes.

4 Q. Okay. And the title of that, and it was a
5 full-page ad in the local newspaper and perhaps
6 elsewhere, that says "CO2 Pipelines are Safe"; correct?

7 A. It does.

8 Q. Okay. And what was the purpose of Summit
9 putting this in The Bismarck Tribune?

10 A. Well, we've -- we have a campaign to combat what
11 we think may be misinformation. And so CO2 pipelines
12 are safe, in my opinion. If you look at transportation
13 of commodities, whether it's CO2, natural gas, refined
14 products, transportation in pipeline is much safer than
15 transportation via truck, via rail, other means of
16 transportation.

17 And so there's been some misinformation, even at
18 the Burleigh County commissioner meetings, about
19 fatality projections, etcetera, associated with
20 pipelines. And so we feel it's important to get the
21 facts out.

22 Q. Well, is it important for Summit to get the
23 facts out about the safety risk associated with the
24 proposed CO2 pipeline?

25 A. Happy to talk about the safety risk.

1 Q. Okay. But is it important for Summit to
2 disclose that when they're publishing an ad, to tell
3 people the good and the bad and the risks?

4 A. Well, I -- I think we can -- we can put -- the
5 content of the ad is at our discretion. However, at the
6 Burleigh County commissioners meetings, we've attended
7 those several times and been more than willing to
8 discuss construction, operation, potential risk of
9 operation at those -- at those meetings.

10 Q. Well, we'll talk about those meetings in a few
11 moments, but let's focus on Exhibit 123 for now. One of
12 the samples -- examples that is cited to by Summit in
13 this article is that -- CO2 pipelines already operating
14 in North Dakota, and you refer to the Dakota
15 Gasification Company 220-mile CO2 pipeline; correct?

16 A. Correct.

17 Q. Okay. But you don't disclose there that there
18 was a leak in the storage facility where the terminus
19 was of this pipeline in Weyburn, Saskatchewan; correct?

20 A. Correct.

21 Q. Okay. Are you aware of that leak?

22 A. I -- I am aware of that leak.

23 Q. Okay. And, in fact --

24 A. Generally aware of that leak. Not the
25 specifics.

1 Q. Sure. And so you're aware that in that
2 incidence there were some individuals affected by that
3 leak in Canada; correct?

4 A. That's my understanding.

5 Q. And it was an undetected leak for a long period
6 of time that came through the ground; correct?

7 A. I'm not familiar with those specifics.

8 Q. And then it goes on to say here, "CO2 pipelines
9 have a best-in-class safety record with no fatalities
10 in 50 years of operations"; correct?

11 A. That is correct.

12 Q. And the purpose of that is to suggest to the
13 public that these pipelines are safe and it's likely
14 improbable anybody will get injured or killed; correct?

15 A. This doesn't say anything about the probability.
16 What it does say, it states the facts of PHMSA
17 documentation, which only goes back 20 years, to my
18 understanding, there has been zero fatalities and one
19 recordable injury in the last 20 years from CO2
20 operations. And there are over 50 CO2 pipeline
21 operators in this country. But the pipeline -- CO2
22 pipelines have been in service since the '50s. And,
23 again, that safe -- same safety record. So that's a
24 true statement.

25 Q. Well, we'll talk about what you said was only

1 one reportable injury. I don't think that's accurate,
2 and we'll discuss that in a few moments, but why do you
3 only discuss fatalities here and not injuries?

4 A. I just did discuss injuries, one recordable
5 injury.

6 Q. Well, it's not in the article, is it, the ad?

7 A. We don't have a pipeline operating yet either,
8 Mr. Bakke.

9 Q. Okay. Are you familiar with the Satartia,
10 Mississippi, incident?

11 A. I'm very familiar with it.

12 Q. Okay.

13 A. Satartia, Mississippi.

14 Q. Yes. And you have in your binder there Exhibit
15 W155. Let's turn to that.

16 Are you there?

17 A. I'm there.

18 Q. Okay. And that's the U.S. Department of
19 Transportation study from May 26, 2022, so less than a
20 year ago; correct?

21 A. Well, it's not less than a year ago. You're
22 talking about the incident or are you talking about the
23 report?

24 Q. The report.

25 A. Okay.

1 Q. Okay. And the incident was on February 22,
2 2020; correct?

3 A. Correct.

4 Q. And it was a CO2 pipeline?

5 A. Correct.

6 Q. And, incidentally, there are very few CO2
7 pipelines that have been built anywhere in the U.S.;
8 correct?

9 A. No, that's not correct.

10 Q. Okay. Is this going to be the largest one?

11 A. It is.

12 Q. Okay. By a long shot; correct?

13 A. There are some lengthy pipelines in east Texas
14 and Colorado but this will be the biggest.

15 Q. And what this report from the U.S. Department of
16 Transportation reflects in regards to the Denbury CO2
17 pipeline, that there was natural force damages and there
18 were total costs of almost \$4 million; correct?

19 A. Yeah. There were five causes cited in the PHMSA
20 report -- investigation report.

21 Q. Okay. Well, there's key points listed on page 2
22 of this report, and the location where this leak
23 occurred was the village of Satartia; correct?

24 A. Well, it doesn't occur in the village. It
25 occurred outside the village.

1 Q. Correct. And that's a location, had a
2 population of 50 people; correct?

3 A. That's my understanding.

4 Q. Okay. Much different than Bismarck, Mandan,
5 which has a much larger population; correct?

6 A. Correct.

7 Q. Okay. And in the U.S. Department of
8 Transportation, in their investigation report, found
9 that 200 people, the whole town of Satartia, and people
10 from surrounding areas were evacuated; correct?

11 A. Yes.

12 Q. 45 people were taken to the hospital; correct?

13 A. Yes.

14 Q. Okay. And they also determined in that incident
15 that 45 people had to have medical attention at local
16 hospitals, including people who were caught in the vapor
17 cloud while driving a vehicle; correct?

18 A. Correct.

19 Q. And what happens when you have a CO2 leak is
20 that, because vehicles, for their catalytic converters
21 need oxygen to operate, all vehicles, all gas-powered
22 equipment, will shut off; correct?

23 A. If the concentration is -- is dense enough,
24 correct.

25 Q. Sure. And if it's a concentration of more than

1 10 percent, that's what happens; correct?

2 A. Well, I prefer to reference in parts per million
3 rather than 10 percent or percentages but...

4 Q. Okay. So tell us in parts per million.

5 A. Well, I think, again, I'm not familiar with when
6 this -- what the concentration was when these vehicles
7 apparently failed to continue to work. I am familiar
8 with the fact that in Denbury's CO2 stream there was
9 hydrogen sulfide present, and that was also reflected in
10 the report when you heard reports of smelling an odor
11 and seeing a color -- colored gas. So as you probably
12 know, hydrogen sulfide is very toxic.

13 And so the stream that we will transport, the
14 CO2 we will transport, will be nearly pure, the only
15 impurities being oxygen and nitrogen. So there will not
16 be any hydrogen sulfide. So it would be a much
17 different commodity.

18 Q. Okay. And my question wasn't about any
19 difference in commodity. This was a CO2 leak just like
20 you're proposing to have CO2 in this pipeline; correct?

21 A. I'm just differentiating in the commodity.

22 Q. Okay. And the shut-off valves in Mississippi
23 were less than ten miles apart; correct?

24 A. I believe.

25 Q. Okay. 9.55. Isn't that what it says on page 4

1 of this report? Last sentence before the heading
2 "Events Leading Up to the Failure."

3 A. Yeah, I see that. Yes.

4 Q. Okay. And you're proposing shut-off valves that
5 are 20 miles apart, correct, for the Summit pipeline?

6 A. That's not correct.

7 Q. Okay. How far are they apart?

8 A. Well, the new PHMSA rule that we're complying
9 with, the maximum spacing is 20 miles. And so in high
10 consequence areas or could-affect areas, that spacing is
11 much tighter.

12 Q. Okay. Well, is that what the position that is
13 taken in the application that was submitted to the PSC,
14 is that the shut-off valves are going to be 20 miles
15 apart?

16 A. I don't remember the exact reference in the PSC
17 application.

18 Q. Well, it's in there. Is that wrong?

19 A. I said that the maximum spacing will be
20 20 miles. There will be valves that will be spaced
21 closer than that.

22 Q. Okay. And there's a timeline here provided on
23 page 6 in regards to that CO2 leak, and it leaked at
24 7:06 p.m. And no one could even get close to the leak
25 until about 36 minutes later, according to the timeline;

1 correct?

2 A. According to the timeline, that's correct.

3 Q. And it released an estimated 220 barrels of
4 liquid carbon dioxide; correct?

5 A. According to the report, yes.

6 Q. Is that a small amount of CO2? A large amount
7 of CO2?

8 A. I mean, I -- you'd ask me to speculate. It was
9 a 24-inch pipeline. I don't know how long it took for
10 that amount of CO2 to be released. You're asking me to
11 speculate.

12 Q. You don't know?

13 A. Excuse me?

14 Q. You don't know whether it's a large volume or a
15 small volume of CO2?

16 A. Not in this incident, I can't attest to that.

17 Q. And then on page 7 of the report, it talks about
18 an individual who succumbed to the effects of the
19 exposure of the released CO2, required emergency
20 assistance to be evacuated, one of two residents living
21 in a dwelling in closest proximity to the pipeline
22 rupture passed out upon investigating the cloud; is that
23 correct?

24 A. According to the report, yes.

25 Q. So your testimony about there only being one

1 reportable injury throughout the whole U.S. from CO2
2 pipeline leaks isn't consistent with this report by the
3 Department of Transportation from Mississippi, is it?

4 A. No, it absolutely is. If you look at the PHMSA
5 definition for reportable incidents, and you don't see
6 -- you don't see reflected in this report where there
7 were any recordable injuries.

8 Q. Let's look at page 12 of that report. There's a
9 modeling of the plume that was done by the U.S.
10 Department of Transportation based on meteorological
11 data; is that correct?

12 A. That's correct.

13 Q. And it shows that that plume from the leak
14 location traveled almost 40 kilometers; correct?

15 A. Per the -- per the diagram, it looks to be, yes.

16 Q. Sure. And that's what, roughly 25 miles that
17 the CO2 plume traveled?

18 A. What it does represent here, at least that I see
19 and remember, is the concentration. Well, I guess it is
20 here. I can't see the colors because this is in black
21 and white.

22 Q. But what that tells us is that if there is a
23 leak of CO2, it can travel for a very significant
24 distance; correct?

25 A. Yes. And we also know that it disperses very

1 quickly. What -- what, I think, is important in this
2 discussion, as I'm sure you also know in this report,
3 that one of the failures of the pipeline operator was in
4 their dispersion modeling. So they didn't model the
5 migration, potential migration, in the unlikely event of
6 a release that occurred. They didn't model the
7 migration or potential migration of the CO2.

8 Q. Well, let's address first your comment that it
9 disperses fairly quickly. That's not accurate because
10 CO2 goes to low-lying areas; correct?

11 A. It is heavier than air. But we have completed
12 our dispersion model, and I can tell you that, depending
13 on environmental conditions, depending on wind,
14 temperature, humidity, topography, the volume released,
15 wide range of potential scenarios, that it typically
16 disperses very quickly, at least in significant
17 concentrations.

18 Q. Okay. Well, the modeling that you've done, has
19 that been shared with the public?

20 A. It has not. As I mentioned earlier when I was
21 talking to Mr. Pelham, that pipelines, as you probably
22 know, are considered infrastructure so some information
23 is required to be confidential, and one of those is
24 dispersion modeling. But, again, if the commissioners
25 want to see the output of that, of our modeling, as

1 PHMSA will want to see, we're happy to share that.

2 Q. Well, in terms of this dispersion model, does it
3 depend on the wind, where the CO2 disperses to?

4 A. It can, yes.

5 Q. Okay. So does the dispersion model you're
6 talking about that Summit has apparently done but not
7 produced --

8 A. It's not apparently. We have done it.

9 Q. Okay. The dispersion model, does it show which
10 direction the CO2 plume or cloud would go under
11 prevailing wind conditions in northern Burleigh County?

12 A. So we look at all of the potential weather
13 conditions in each of these areas, and we focused on
14 high consequence areas, which the Bismarck area would
15 be, and then we look at potential overland flow. So in
16 several scenarios, depending on the concentration of
17 release and the volume released, how would that travel,
18 to the extent it would travel, and the concentration of
19 CO2 along that path.

20 Q. Okay. Well, does -- do you know what the
21 prevailing winds are from north Burleigh County, which
22 direction they typically blow?

23 A. I would have to guess so, no, I do not know.

24 Q. Okay. So in the modeling that Summit did, did
25 they take into account that the prevailing winds are

1 from the north blowing to the south, directly towards
2 the city of Bismarck?

3 A. As I said in all high consequence and
4 could-affect areas, we have modeled that with the
5 environment -- the range of environmental conditions in
6 each of those areas.

7 Q. Okay. And that's what happened in Mississippi
8 here, is that plume went in the direction of the
9 prevailing wind at the time; correct?

10 MR. BENDER: If you know.

11 A. Yeah, I don't know. I'd be speculating.

12 Q. And if we look at page 15 of that report, one of
13 the contributing factors that's identified by the U.S.
14 Department of Transportation in their version, it's
15 bullet point number 4, is that the pipeline operator,
16 Denbury's CO2 dispersion model underestimated the
17 potential affected area that could be impacted by a
18 release; correct?

19 MR. BENDER: You know, Your Honor, I'm going to
20 object. I mean, we've gone on and on and on with this
21 now where he's just pointing out things in the report.
22 I mean, the commissioners are certainly capable of
23 reading the report. We don't have to go through this
24 item by item and waste all this time.

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

1 MR. BENDER: I guess I should have objected
2 sooner.

3 ALJ HOGAN: He can answer that one. Then maybe
4 we can move on Mr. Bakke.

5 A. Again, I'm making an assumption, but it's my
6 understanding in reading the report that they did not --
7 their dispersion modeling did not take into account
8 potential migration of CO2 into the area of the village
9 of Satartia.

10 Q. (BY MR. BAKKE) Let's turn to Exhibit 154. Is
11 this a report on Weyburn-Midale CO2 monitoring and
12 storing project in Weyburn, Alberta, Canada?

13 (Pause)

14 Q. And I just have a few questions for you on this,
15 if we could perhaps speed it up. I don't need you to
16 read the whole document.

17 My question is, on page 2 where they report the
18 2011 CO2 leakage, it indicates here that the location
19 where the leak was detected was over a mile away from
20 the storage location; correct?

21 A. I haven't had an opportunity to read it so --

22 Q. Let's just --

23 A. -- you say.

24 Q. -- turn down to the fourth -- fifth paragraph.
25 Towards the end of that it says "no CO2 pipelines

1 crossed property lines and the closest CO2 EOR injection
2 site was a mile away"?

3 MR. BENDER: And, Your Honor, I'm going to
4 object as to relevance. We're not talking about a leak
5 from a pipeline. I think we're talking about a leak
6 from a storage facility. And I think this is probably
7 more appropriate questioning and testimony when the
8 issue of storage comes before the North Dakota
9 Industrial Commission.

10 ALJ HOGAN: My bigger concern is I have the
11 impression Mr. Powell hasn't reviewed this document. So
12 I guess, in the interest of time, if we can move on and
13 not ask him about --

14 MR. BAKKE: Well, just one other question --

15 UNIDENTIFIED SPEAKER: In the interest of time,
16 maybe the public wants to hear some of this.

17 ALJ HOGAN: Well, and the exhibits will be
18 available if anybody wants to look at them in -- during
19 the break. They'll be available --

20 UNIDENTIFIED SPEAKER: Nice to hear it.

21 ALJ HOGAN: Excuse me. We need -- I understand
22 this is a process and it's a long process, but we need
23 to move along orderly.

24 Mr. Bakke.

25 MR. BAKKE: Okay.

1 Q. (BY MR. BAKKE) Just one other question
2 regarding this document. Doesn't this reflect that the
3 property-owning family over a mile away had raised
4 concerns about issues for years prior to the incident
5 about possible CO2 release on their land --

6 MR. BENDER: And I have the same objection.

7 Q. -- in the next paragraph?

8 MR. BENDER: We're talking about apples and
9 oranges, pipelines versus storage facilities.

10 ALJ HOGAN: The objection is noted.

11 If you can answer the question, I'll allow you
12 to, sir.

13 A. I can't answer the question. I'm not familiar
14 with this incident.

15 Q. (BY MR. BAKKE) Well, then let's focus on CO2
16 pipelines. Let's look at Exhibit 146, W146.
17 Exhibit 146 is the Dakota Gasification Company
18 publication "Living and Working Near CO2 and SNG
19 Pipelines." Is that the title of this document?

20 A. It is.

21 Q. Okay. And just a few questions about this.
22 First of all, this document reflects, on the second
23 page, the pipeline installed by Dakota Gasification
24 Company is a 205-mile pipeline; correct?

25 A. Correct.

1 Q. From the starting point in Ames, Iowa, to the
2 storage location near Center, North Dakota, how many
3 miles is that?

4 A. As I mentioned previously, it's approximately
5 2,060 miles.

6 Q. And so about ten times as long as the DGC CO2
7 pipeline.

8 A. Sure. I agree with the math.

9 Q. Okay. And that's a much smaller diameter
10 pipeline. It's a 14-inch and 12-inch carbon steel
11 pipeline, according to the top of page 2 on the
12 left-hand side?

13 A. As I also mentioned earlier, the Midwest Carbon
14 Express ranges from 4 to 24. So in North Dakota, there
15 is larger pipeline, 24-inch, but there are also 4 and
16 6-inch and 8-inch pipeline. Predominantly smaller
17 pipeline, but there is a significant length of 24-inch
18 pipeline.

19 Q. Well, the 4-inch, the 6-inch, the 8-inch
20 pipelines, those are feeder lines from the specific
21 ethanol plants, the 32 plants; correct?

22 A. They're lateral pipelines, yes.

23 Q. Sure. And then they feed into this 24-inch
24 pipeline that runs essentially the entirety from where
25 it comes into McIntosh County in North Dakota and then

1 goes to the east to connect with the Tharaldson Ethanol
2 plant in Casselton; correct?

3 A. Well, the 24-inch where it enters North Dakota
4 from South Dakota runs up east and northeast of Bismarck
5 to the sequestration area where then it -- it ties into
6 -- connects to smaller pipe that's feeding the injection
7 sites.

8 Q. Right. But the 24-inch pipeline runs pretty
9 much from eastern North Dakota all the way to the
10 location where the storage site is, because there's only
11 one ethanol plant in North Dakota who's going to
12 potentially benefit from this pipeline; correct?

13 A. No, that's not correct.

14 Q. Okay. So what other ethanol plants in North
15 Dakota are part of the 32 ethanol plants that are
16 feeding into this pipeline?

17 A. It's the only one currently under contract, but
18 there are other ethanol plants that potentially could
19 connect.

20 Q. Okay. Well, let's focus with what we have
21 today. It's just -- just one ethanol plant in North
22 Dakota that's signed up to feed into this pipeline if
23 it's built; correct?

24 A. Correct.

25 Q. Okay. Okay. And so let's see what DGC says

1 about carbon dioxide in their publication about living
2 and working near CO2 pipelines. On the bottom of
3 the second page it says "Concentrations of 10 percent or
4 more can produce unconsciousness or death"; correct?

5 A. I'm trying to catch up with you here.

6 Q. Under the heading "What is carbon dioxide?" on
7 the bottom left of the second page.

8 A. I see it, yes.

9 Q. "Concentrations of 10 percent or more can
10 produce unconsciousness or death."

11 Does Summit agree with that, that type of
12 exposure to CO2 can cause unconsciousness or death?

13 A. I agree that if there's a concentration of CO2
14 that is dense enough to reduce the oxygen available,
15 then, yes, it could result in death.

16 Q. Okay. And when the CO2 is in the pipeline, is
17 it a hundred percent concentration of CO2?

18 A. It's -- it's nearly.

19 Q. Okay. And so if there's a leak and someone's
20 near that, if they're exposed and the percentage is 10
21 percent or higher, they could die?

22 A. Again, you're asking me to speculate what kind
23 of leak, how much volume, what concentration, what are
24 the environmental conditions.

25 Q. Okay. Does Summit agree with the DGC

1 publication that "Lower concentrations may cause
2 headache, sweating, rapid breathing, increased
3 heartbeat, shortness of breath, dizziness, mental
4 depression, visual disturbances and shaking. The
5 seriousness of these symptoms is dependent on
6 concentrations and length of time the individual is
7 exposed."

8 Summit agree with that?

9 A. I think if you look at the -- at the OSHA
10 acceptable exposure limits, 15,000, 30,000, 80,000 parts
11 per million, yes, there are exposure timelines
12 associated with those. And for the higher concentration
13 levels, yes, there are various degrees of potential
14 incapacity.

15 Q. Sure. Does Summit agree where it says "Skin,
16 eye, or mouth contact with compressed CO2 can cause
17 tissue damage, burns, or frostbite"?

18 A. I will agree that when -- if CO2 were to be
19 released, because of the significant or drastic pressure
20 change, you would have a cryogenic effect. So that's
21 why, in the Satartia, Mississippi incident, you saw what
22 looked like snow or frost around the immediate release
23 point. So that is a risk. It's a little conflating --
24 I mean, I'm concerned about the conflation in this
25 article because they reference the presence of hydrogen

1 sulfide.

2 Q. And it says "CO2 is heavier than air and when
3 released from a storage container or pipeline it tends
4 to stay along the ground and settle in low spots."

5 Is that what happens with CO2 when there's a
6 leak?

7 A. Again, you're asking me to speculate but if --
8 it is heavier than air, like propane, like butane, like
9 other components of natural gas. So if they are
10 released in vapor state, they may stay lower to the
11 ground for some period of time.

12 Q. Okay. And then turn to the second to last page,
13 which has the map showing the route of the DGC CO2
14 pipeline. And there's a heading "How to Evacuate." Do
15 you see that?

16 A. Yes.

17 Q. Okay. And it says, second paragraph, "In the
18 event of a gas or vapor release, do not try to outrun
19 the cloud by going downwind. Eventually the vapors will
20 catch up with you."

21 Do you agree with that?

22 A. I -- I don't -- I don't know the circumstance of
23 what this is based on so I can't agree with it.

24 Q. Okay. Then it says "Pay particular attention to
25 the wind direction and source of the leak."

1 A. I would --

2 MR. BENDER: Here we go again. I mean, we're
3 going line by line, in essence reading the document. I
4 mean, the Commission can read.

5 MR. BAKKE: Yeah, I'm just about done with this,
6 but I think it's clearly relevant to his testimony that
7 this is a completely safe pipeline and there's nothing
8 for the public or the PSC to be concerned about.

9 A. Well, I think that's a mischaracterization. I
10 do believe that this will be one of the safest pipelines
11 constructed. It's new construction. It's the first
12 large scope project construction under PHMSA's new rule
13 around valve spacing. We're going above and beyond, in
14 construction and design of construction, above and
15 beyond PHMSA requirements in many different areas. So I
16 do believe it will be constructed and operated very
17 safely. I never said there was no risk or nothing to
18 worry about.

19 ALJ HOGAN: My recollection was that Mr. Powell
20 said he would discuss safety risks so I guess my
21 suggestion is maybe we talk about the safety risks on
22 this particular pipeline rather than referencing --

23 MR. BAKKE: Sure.

24 ALJ HOGAN: -- what's been published --

25 MR. BAKKE: Okay.

1 ALJ HOGAN: -- on other ones.

2 Q. (BY MR. BAKKE) Let's do that. Let's turn to
3 another topic. And, first of all, the DGC 205-mile CO2
4 pipeline, do you understand, Mr. Powell, that's in a
5 strictly rural area location, not near any cities or
6 towns, some significant distance away?

7 MR. BENDER: If you know.

8 A. I've seen the KMZ file so I think that's
9 generally correct. And I will say it's my understanding
10 also that they've been operating since 2000, the
11 pipeline segment, with no fatalities and no injuries.

12 Q. Okay. So why is it in this situation with that
13 proposed Summit pipeline of 2,600 miles, that the only
14 location on the entire route where Summit is requesting
15 to install the pipeline close to a city is Bismarck?
16 Why is that?

17 A. Well, that's incorrect. It's not 2,600 miles,
18 Mr. Bakke. It's 2,060 miles. And then, secondly, it's
19 not the largest city. So the pipeline goes south and
20 west of Sioux Falls. There are other areas in Iowa.
21 Now, it is true for a project of this size, I believe
22 only about 5 percent of the pipeline route actually
23 traverses a high consequence or could-affect area, which
24 is extremely low. In my experience, they're usually,
25 depending on where you are in the country, 40 to 50 to

1 60 percent may affect the high consequence or
2 could-affect area. So in that regard in routing, we've
3 tried to minimize the impact of high consequence and
4 could-affect areas to the extent practical, and I think
5 5 percent along a pipeline of this significance in these
6 five states, we've been very practical.

7 Q. Well, why don't you take a look at Exhibit W134.
8 That's a map, the Summit proposed pipeline routes. Are
9 you there?

10 A. Yes.

11 Q. That's a map that Summit prepared showing the
12 proposed pipeline route from Ames, Iowa, to west of
13 Bismarck to the location, the storage location, in
14 Center, North Dakota?

15 A. Yeah. That's a -- that's an illustrative
16 example, yes.

17 Q. Okay. Well, is it accurate what Summit prepared
18 of its proposed route?

19 A. I guess conceptually accurate, but obviously the
20 scale of this is not accurate, no.

21 Q. Okay. How is it inaccurate?

22 A. Well, it's difficult to show the intricacies of
23 a network of this size on a PowerPoint slide with any
24 sense of scale --

25 Q. Okay. Well, we can see --

1 A. -- or proximity.

2 Q. Well, we can see from Summit's own proposed
3 pipeline route map, that the closest this pipeline gets
4 to Fargo is -- where the ethanol plant is in Casselton,
5 roughly 22 miles to the west; is that correct?

6 A. I'm not sure of the distance.

7 Q. Is that what it shows? Is that the ethanol
8 plant, Mr. Tharaldson's ethanol plant?

9 A. That looks generally correct, yes.

10 Q. Okay. Incidentally, is Mr. Tharaldson an
11 investor in Summit?

12 A. He is.

13 Q. Okay. Large investor?

14 A. I'm -- I'm not at liberty to -- well, one, I
15 don't know the extent of his investment but, secondly,
16 if I did, I wouldn't -- I don't think I have the
17 authority or it wouldn't be prudent of me to mention
18 that publicly.

19 Q. Okay. Do you see Sioux Falls on Summit's map
20 showing the route?

21 A. I do.

22 Q. It shows that the pipeline was routed west of
23 Sioux Falls by some substantial distance; correct?

24 A. Again, when we're routing pipelines, I'm sure
25 you know, we try to follow existing infrastructure. And

1 so around Sioux Falls we paralleled Dakota Access, just
2 slightly to the south and west of Dakota Access. In the
3 Bismarck area, we chose to go north of Bismarck versus
4 south to cross the Missouri River. And so this is the
5 rationale behind Sioux Falls versus Bismarck.

6 And as you know, Mr. Bakke, I'm sure with
7 conversations with Mr. Warford, at least my conversation
8 with Mr. Warford, we're well outside of the 2045
9 development plan. So this representation of it,
10 brushing the edge of Bismarck, is representatively not
11 correct.

12 Q. Well, when we look at Sioux Falls, we can see on
13 Summit's own map of the route that they didn't follow
14 the straightest line which would be the cheapest
15 pipeline cost, wouldn't it?

16 A. Exactly. So as I mentioned earlier, in routing,
17 we use a software that takes into consideration hundreds
18 of potential impacts such as federal grasslands, such as
19 bird migratory areas, such as high consequence areas,
20 high population areas, water bodies, a vast array of
21 considerations. And so current -- current
22 infrastructure corridors. And so it's -- yeah, a
23 straight line would be the cheapest, but for us it was
24 what we thought was the most prudent constructible
25 route.

1 Q. Sure. And you avoided Sioux Falls and went
2 about six to seven miles west of Sioux Falls; correct?

3 A. Generally sounds correct. I'm -- I don't
4 remember off the top of my head exactly how far we are
5 to the southwest of Sioux Falls.

6 Q. Well, doesn't Exhibit 144 that we've marked show
7 precisely what you've submitted to the State of South
8 Dakota, the equivalent of the Public Service Commission
9 there, showing the route of the pipeline going west of
10 Sioux Falls about six to seven miles?

11 MR. BENDER: Objection. Asked and answered.

12 ALJ HOGAN: I think he's answered that question.

13 MR. BAKKE: Okay. That's fine.

14 Q. (BY MR. BAKKE) And how far did you go with the
15 pipeline of Aberdeen, South Dakota?

16 A. Again, Mr. Bakke, I'd have to reference a map.
17 I don't remember off the top of my head what the
18 distance is.

19 Q. Let's look at Exhibit 144, the second page, the
20 map showing Aberdeen.

21 A. I do think if you look at Exhibit 134 that you
22 referenced, if you look at the second page, you will see
23 the proximity to the east from the city of Bismarck.

24 What was the exhibit you referenced, sir?

25 Q. 144. Does the second page of that reflect that

1 it's approximately six miles west of Aberdeen where
2 Summit decided to route the pipeline to avoid Aberdeen?

3 A. The second page?

4 Q. The first page is the Sioux Falls map submitted
5 by Summit to the South Dakota equivalent of the PSC.
6 The second page is the map submitted to the equivalent
7 of the PSC of South Dakota for Aberdeen.

8 A. Okay.

9 Q. Look right, about six miles?

10 A. Per the scale.

11 Q. Okay. Then let's talk about Bismarck. And I
12 heard you say, in response to some questions earlier
13 today, that from residences and schools, you did a
14 500-foot setback; is that correct?

15 A. Existing habitable structures, that's correct.

16 Q. Well, who decided on the 500-foot setback?

17 A. That's PSC requirement.

18 Q. Okay. Let's look at Exhibit 137. Do you have
19 Exhibit 137?

20 A. I do.

21 Q. Okay. And do you see that there are three
22 public schools in Burleigh County in close proximity to
23 the proposed route of the Summit pipeline?

24 MR. BENDER: If you know what the word "close
25 proximity" means, you can answer.

1 Q. Well, do you see the yellow crosses there that
2 identify school?

3 A. Yes.

4 Q. Okay. How far is the proposed pipeline route
5 from the Naughton School, Naughton Public School in
6 Burleigh County?

7 A. You're asking me to guess. It looks like, from
8 the scale, it's a mile and a half to -- I'm speculating
9 based on the scale. Assuming this scale is accurate.

10 Q. Okay.

11 A. I don't know that.

12 Q. So is it your testimony that it's safe for this
13 pipeline to be within a mile and a half of an existing
14 public school in the event there's a leak?

15 A. I'm saying it is. And I'm saying that you know
16 in the -- in the city of Bismarck, there was a refined
17 products pipeline that runs through the city of Bismarck
18 that's across the road from the high school. So there
19 are a lot of residential development in and around
20 existing pipelines in the city of Bismarck.

21 Q. Okay. Well, when you -- when you use the term
22 "refined products," do you mean natural gas?

23 A. No.

24 Q. Okay. What do you mean by "refined products"?

25 A. I mean gasoline or distillate.

1 Q. Okay. And those products, gasoline or
2 distillate, provide a benefit to the citizens of North
3 Dakota; correct?

4 A. I assume they -- they provide fuel to North
5 Dakota.

6 Q. Sure. Which would be a benefit to the citizens;
7 correct?

8 A. Yes.

9 Q. That's one of the responsibilities that Summit
10 has here, is to show to the Public Service Commission
11 that there's benefit to the state of North Dakota and
12 the citizens of North Dakota by this CO2 pipeline;
13 correct?

14 A. Correct.

15 Q. Okay. So when we talk about natural gas which
16 people use for their homes and there being natural gas
17 pipelines in close proximity to homes, the reason for
18 that is people use gas in their homes and, therefore,
19 have to have a pipeline to get it into their home to
20 use; correct?

21 A. Assuming they use natural gas.

22 Q. Sure. And it provides a benefit; correct?

23 A. Correct.

24 Q. And nobody in Burleigh County or in North Dakota
25 is going to use this CO2 for any purpose, are they?

1 A. Well, absolutely not the CO2 as a commodity, but
2 the Tharaldson plant produces a significant amount of
3 ethanol, employs a significant amount of -- employs a
4 significant amount of employees and they contribute to
5 the GDP of the state, and they also -- that's one of the
6 largest ethanol plants on our network at almost a half a
7 million tons a year, they provide a significant demand
8 for corn in that area. Now, that's on the eastern side
9 of North Dakota, granted, but a significant demand for
10 corn and I would argue even helps support high land
11 values.

12 Q. Well, that's a benefit to a private company,
13 Tharaldson Ethanol; correct?

14 A. Well, it's also a benefit to the folks in the
15 community that work for that company or are employed by
16 that company. It's also a benefit to the people that
17 benefit from the taxes they pay. And it's also a
18 benefit to all the farmers in the area that sell their
19 corn to that ethanol plant.

20 Q. Sure. And you could say that about any private
21 business. Perhaps some people might argue about whether
22 lawyers provide a benefit, but for a lot of private
23 businesses, they all provide benefits; right?

24 A. Well, again, whether you're -- you're
25 differentiating between private and public in providing

1 benefit, they can both provide benefits. And in this
2 case, I would argue they do.

3 Q. Right. But the distinction between refined
4 products or natural gas and CO2 is CO2 isn't a product
5 that any citizens in North Dakota benefit from or can
6 use. It's waste from other states; correct?

7 A. It's not a waste. I mean, it's -- CO2 can be
8 used for many industrial purposes or commercial
9 purposes. So wastewater treatment, dry ice,
10 carbonization. There are a lot of sources.

11 Q. Sure. But that's not --

12 A. A lot of uses.

13 Q. That's not what this CO2 in this pipeline is?

14 A. This CO2 will be removed from a process that
15 then supports an ongoing business enterprise in
16 Casselton, which is the Tharaldson Ethanol plant, and
17 then by -- by supporting that ethanol plant and keeping
18 that viable, then that also supports the demand for a
19 significant amount of farming in that area.

20 Q. Okay. But this isn't going to be marketed, this
21 CO2. It's going into the ground where it's being stored
22 permanently; correct?

23 A. That's correct.

24 Q. Okay. And 31 out of the 32 ethanol plants are
25 located out of the state of North Dakota?

1 A. Currently.

2 Q. Okay. And so using your analysis of a benefit
3 to this Tharaldson Ethanol plant, the lion's share of
4 this benefit doesn't go to the citizens of North Dakota
5 or to the State of North Dakota. It goes to Iowa, it
6 goes to Minnesota, it goes to South Dakota, it goes to
7 Nebraska where these other 31 plants are located;
8 correct?

9 A. I would agree that, proportionally, there are
10 more ethanol plants in the other four states than there
11 are in North Dakota currently.

12 Q. Okay. Turning back to Exhibit 137, do you see
13 there that there are identified on that map by purple
14 dots 911 address points?

15 A. Yes.

16 Q. Okay. And do you see that numerous of those 911
17 address points are actually abutting the proposed
18 pipeline route?

19 A. There are some, yes.

20 Q. Okay. And do you understand those would be
21 residences or locations where a call locate could be
22 made by someone who made a 911 call from their residence
23 or business or shop?

24 A. I'm not familiar with this map, but if that's
25 what you say, then okay.

1 Q. Okay. So there's -- if you count them up, and
2 we have this information from the county, there's about
3 1,200 911 address points within a mile or two of this
4 proposed pipeline route. Isn't that much too close to
5 this many residences?

6 A. Well, you said a mile or two. You can see that
7 the 911 address points in -- in very close proximity of
8 the pipeline, let's pick a mile, are not 1,200. The
9 larger concentration's in -- in the city.

10 Q. So was the county wrong in providing that
11 information?

12 A. I didn't question whether the county was right
13 or wrong or say whether -- I'm just looking at the
14 scale. Again, I don't know that this map is to scale.
15 You said a mile to two miles. So if you look at a mile
16 to two miles from this red line, my guess at a quick
17 glance, it's not 1,200.

18 Q. Let's talk about this setback issue. You talked
19 about 500 feet. Aren't there, in fact, at least one of
20 the counties here that's being considered today Emmons
21 County who has passed an ordinance saying that there has
22 to be a setback of a mile and a half before there can be
23 any residence near this pipeline?

24 MR. BENDER: I'm going to object as to
25 relevance.

1 ALJ HOGAN: I'll allow him to answer if he
2 knows.

3 A. It's my understanding, Judge, that Emmons County
4 has passed an ordinance. I know we're evaluating the
5 ordinance. It's also my understanding that Burleigh has
6 -- their planning and zoning folks have passed an
7 ordinance and the commission is going to hear it later
8 this month. But we're currently evaluating them. I
9 don't have a comment specific to the ordinance, the
10 setbacks that you reference, Mr. Bakke.

11 MR. BAKKE: And for the record, Your Honor, that
12 ordinance is W107, Ordinance 23-01-01, which indicates
13 that Emmons County has passed an ordinance prohibiting
14 any residence within a mile and a half in either
15 direction of this pipeline due to safety concerns with
16 the pipeline.

17 Q. (BY MR. BAKKE) In relation to other
18 jurisdictions such as Iowa, are you aware, as the chief
19 operating officer, of concerns in regards to the safety
20 procedures and emergency response procedures that Summit
21 has proposed?

22 A. Can you be more specific?

23 Q. Well, specifically, are you aware of Exhibit
24 W110, the letter submitted to the Iowa Utility Board,
25 the equivalent of the PSC, by Dan Harvey, the fire chief

1 of Gruver, Iowa?

2 MR. BENDER: Once again, Your Honor, objection
3 as to relevance. We're going to be here a long time
4 talking about North Dakota stuff if we're going to start
5 about Iowa. I don't know when we'll finish.

6 ALJ HOGAN: Can you address relevance?

7 MR. BAKKE: Yes. He's talking about 500-foot
8 setbacks. He spent a lot of time talking about
9 emergency response. There's been multiple complaints
10 about how their emergency response training is
11 inadequate, their emergency response planning,
12 procedures, plan is all inadequate. And Fire Chief
13 Harvey indicates that they're being told we can't see
14 the emergency response plan because of these same
15 confidentiality issues, and the training they're
16 providing is inadequate, the people that provided the
17 training don't know what they're doing. It's all
18 outlined in there. And it also indicates that for this
19 type of dangerous carbon dioxide pipeline, they need
20 proper setbacks.

21 He's addressed all of these issues and said
22 they're adequate. And that's not what other
23 governmental entities are saying.

24 MR. BENDER: May I respond?

25 ALJ HOGAN: Sure.

1 MR. BENDER: I think the commissioners, the
2 Commission staff, have had plenty of experience in this
3 area that they can make a determination as to whether
4 the emergency response plans that are -- are ultimately
5 prepared and will be submitted to PHMSA, and obviously
6 if that's something the Commission wants and we can keep
7 it under seal, they can make that determination. They
8 don't need a fire chief from Iowa advising them.

9 ALJ HOGAN: Well, I've already admitted
10 Exhibit 110 so commissioners can obviously read those
11 concerns and take those into consideration. Again, I
12 think we should focus on those procedures and questions
13 that are directed towards North Dakota and this portion
14 of the pipeline.

15 MR. BAKKE: Okay. I can do that.

16 Q. (BY MR. BAKKE) So you talked, Mr. Powell,
17 about Summit attending meetings by the Burleigh County
18 Commission. Were you aware there was a public meeting
19 with the Burleigh County Commission on March 8 in
20 regards to a proposed safety ordinance directed at
21 concerns by the commissioners with the routing and
22 location of the Summit pipeline being too close to the
23 city of Bismarck and in too populated an area of
24 Burleigh County?

25 MR. BENDER: Objection. Relevance.

1 ALJ HOGAN: I'll allow him to answer that one.

2 A. I'm aware Burleigh County's had numerous
3 meetings recently, and I know there's been a discussion
4 on setbacks from a mile to two miles to ten miles. I'm
5 not sure there's any technical support for those
6 setbacks. We'll anxiously await the ordinance and see
7 if that actually spells out any technical support. But
8 we have had people at those meetings. We've had
9 engineers. We've had emergency response staff.

10 Rod Dillon is my emergency response manager.
11 And he's a former fireman. He's spent the last 25 years
12 in emergency response. He's been on some of the more
13 high profile responses in this country so he's well
14 versed in emergency response. And we've had all of
15 these professionals available at these meetings.

16 We've been -- when given a forum, been able to
17 present what we feel is the -- is the facts around the
18 pipeline and potential operation. So we had -- it's
19 likely -- I can't commit because I wasn't there. I
20 can't confirm that we had people at -- present at that
21 meeting as well.

22 Q. And are you aware that no one from Summit
23 attended that meeting where they were specifically
24 discussing and addressing the public's concern and the
25 county commissioners' concerns about the Summit pipeline

1 and the safety risk it posed to Burleigh County?

2 A. Again, I'm not familiar with that specific
3 meeting, although we do have Summit individuals that are
4 present today that have attended every meeting available
5 that they felt was relevant to have their presence
6 there. By relevance, I mean where they're going to be
7 given an opportunity to contribute. They can tell you
8 whether they were at the March 8th meeting or not.

9 Q. Okay. And this was the planning and zoning
10 meeting on March 8th. Were you aware of that?

11 A. I was aware of the planning and zoning meeting.
12 I did -- you know, I've -- I know they're available
13 online so I've watched snippets. I just don't remember
14 who was at that meeting.

15 Q. And are you aware that Burleigh County has
16 passed an ordinance in response to the proposed CO2
17 pipeline dealing with hazardous liquid pipelines?

18 A. I'm familiar that the planning and zoning -- I'm
19 sorry, the proper title, I apologize. Planning and
20 zoning committee, whatever their -- the official title
21 is, I'm aware they passed one. I'm also aware the
22 health official for Burleigh County issued a statement
23 saying that he felt the risk of CO2 pipelines was no
24 greater than the risk of other pipelines.

25 Q. Well, the ordinance, for purposes of the record,

1 that was passed, it was not a planning and zoning. It
2 was passed by the county commission and that's --

3 A. I thought the county commission voted later this
4 month.

5 Q. Well, that's another ordinance. We'll get to
6 that next. But the one that I'm referring to is W114,
7 part of the exhibits, which is the ordinance that was
8 passed by the Burleigh County Commission dealing with
9 hazardous liquid pipelines. But let's talk about the
10 one --

11 A. That's the ordinance requiring the submittal of
12 the emergency response plan?

13 Q. No. That's one defining the hazardous liquid
14 pipeline and also talking about an emergency action
15 plan; correct? Is that what you're talking about, the
16 emergency response plan?

17 A. Again, I wasn't at that meeting.

18 Q. Okay. And on that, shortly thereafter, Summit
19 Carbon Solutions sent Burleigh County a letter through
20 Mr. Skaare of Summit Carbon Solutions threatening to sue
21 Burleigh County about that ordinance they passed;
22 correct?

23 MR. BENDER: If you know.

24 A. I'm -- I know who Mr. Skaare is but I'm not
25 aware of a letter threatening to sue Burleigh County.

1 Q. And that's Exhibit W120. Let's talk now about
2 the ordinance that I think you're referring to that is
3 presently before Burleigh County Commission, which is
4 Exhibit W121. And do you have that in front of you?

5 A. I have 20, yes.

6 Q. And this isn't paginated, but if you turn in 5
7 pages under subpart Roman Numeral VI, you'll see the
8 separation distances or setbacks that Burleigh County
9 has as part of their current ordinance they'll be voting
10 upon soon for the required separation. Can you turn to
11 that page?

12 A. I -- I have it.

13 Q. Okay. And there they list the minimum
14 separation distance for a hazardous liquid pipeline, you
15 would understand that to include the CO2 pipeline;
16 correct?

17 A. If it's hazardous liquid pipelines as defined by
18 the Pipelines and Hazardous Material Safety
19 Administration, that's correct.

20 Q. And it indicates that Burleigh County is going
21 to be voting on whether or not there should be a
22 separation of at least not less than four miles from the
23 extraterritorial line of an incorporated city. Do you
24 see that there?

25 A. I do.

1 Q. And the current route of the Summit pipeline
2 would not meet that requirement. True?

3 A. I would have to verify, but if you ask me to
4 speculate, it probably would not.

5 Q. Okay. As an example, by Silver Ranch,
6 Mr. Wachter's development, it's roughly a mile or
7 thereabouts from Silver Ranch, which is already in the
8 city limits and not the extraterritorial limits,
9 correct, the mile to two miles there?

10 A. I'll take your word for that.

11 Q. Okay. I mean, do you think a mile to two miles
12 from some existing several hundred homes, a new school
13 in that area is too close for this type of pipeline?

14 A. You know, we've already talked, Mr. Bakke, about
15 the requirements from PHMSA and state requirements from
16 the PSC, the statutory requirements. And we feel that
17 constructing this pipeline in accordance with those
18 regulations, we feel comfortable with the risk
19 associated with the pipeline.

20 And as we've talked about on a couple of
21 occasions already this morning, there are existing
22 pipelines, hazardous liquid pipelines, within the city
23 of Burleigh that are in close proximity to residences
24 and buildings and schools, etcetera.

25 Q. Well, when you talk about PHMSA, PHMSA is in the

1 process of being readdressed, and those regulations are
2 planned to be updated in 2024; correct? You know that?

3 A. Well, I think 2024 is probably speculative.

4 Q. Is that your understanding of when they plan to
5 issue new, updated regulations, PHMSA?

6 A. I think to be confirmed.

7 Q. Okay. And the regulations -- the current PHMSA
8 regulations are old; correct? Been in place for many,
9 many years?

10 A. I think old is maybe a mischaracterization but,
11 yes, they've -- since the Pipeline Safety Act, I believe
12 the early '90s.

13 Q. Okay. And part of the request that Summit's
14 making to the PSC is to essentially expedite your
15 application; correct?

16 A. We follow the PSC's schedule. They dictate the
17 schedule. We don't dictate their schedule. Obviously,
18 we've -- we want to construct the pipeline in all five
19 states so -- but, again, we can't tell the commissioners
20 when -- what their schedule is. We need to --

21 Q. Right. But one of the issues the PSC is
22 considering here as part of this hearing and the other
23 hearings they're going to hold on the Summit pipeline is
24 the application of waiver of procedures and time
25 schedules that Summit has requested to be waived;

1 correct?

2 MR. BENDER: If you know.

3 A. I don't know.

4 Q. Okay. Well, what's the hurry, Mr. Powell? Why
5 does Summit need to hustle this through?

6 A. Well, we -- we feel that, as I mentioned many
7 times, there are hundreds of thousands of liquid
8 pipelines in service in this country with an exemplary
9 safety record. That's my view. And we feel that the
10 regulations in place for super critical or dense phase
11 CO₂, which this commodity would be, are definitely
12 rigorous enough to support a safe installation.

13 And as I also mentioned, the ethanol plants, and
14 this push globally and this country to decarbonize, our
15 ethanol plants are under some pressure to reduce their
16 carbon intensity. And unlike installing a solar farm or
17 a wind turbine to generate their power, which reduces
18 their carbon intensity by 3 to 5 points, by pulling the
19 CO₂ off their fermentation process, we reduce it by 25
20 to 30 points, which cuts it in half, which makes them a
21 low-carbon option for low-carbon fuel markets, which
22 makes them very viable, which then benefits their
23 shareholders, communities, their demand for corn goes
24 up, etcetera, potentially.

25 So our drive or our desire to get this done

1 sooner than later is to benefit the ethanol plants but
2 it's also to the landowners. We get in, you know, we
3 construct as soon as practical. We talked earlier about
4 constructing with -- with Mr. Pelham about avoiding
5 removing topsoil during the winter. We get in and
6 construct -- we know we're going to be disruptive to a
7 landowner when we execute a project like this. We know
8 that. So we want to try to minimize this disruption.
9 So we want to get in as quickly as possible, install a
10 pipeline, reclaim the property, and get out of the
11 landowner's -- off the landowner's property as soon as
12 possible.

13 Q. Could you take a look, please, at Exhibit W147?

14 A. Yes.

15 Q. This is a publication from PHMSA, from the
16 Department of Transportation, U.S. Government. "PHMSA
17 Announces New Safety Measures to Protect Americans From
18 Carbon Dioxide Pipeline Failures After Satartia,
19 Mississippi, Leak." Is that what it's called?

20 A. It is.

21 Q. Okay. May 26, 2022, publication date?

22 A. Correct.

23 Q. Okay. And it indicates that "The Department of
24 Transportation Pipeline and Hazardous Materials Safety
25 Administration" -- which is PHMSA -- "today announced it

1 is taking steps to implement new measures to strengthen
2 its safety oversight of carbon dioxide pipelines around
3 the country and protect communities from dangerous
4 pipeline failures. The new measures as well as an
5 enforcement action taken today are the result of PHMSA's
6 investigation into a CO2 pipeline failure in Satartia,
7 Mississippi, in 2020 that resulted in local evacuations
8 and caused almost 50 people to seek medical attention."

9 Have I read that correctly?

10 A. Yeah. We've talked about Satartia previously.

11 Q. Sure. And that's the reason why Summit is
12 trying to hurry this through, making the request of the
13 PSC for the waiver of the procedure, is so they can try
14 to beat out the PHMSA requirements that are projected to
15 go in effect in 2024, isn't it?

16 MR. BENDER: I'm going to object. It's
17 argumentative.

18 ALJ HOGAN: Your objection is noted. He can
19 answer. I think he's kind of already answered, but if
20 you want to answer it directly.

21 A. Yeah. Mr. Bakke, we've walked through the five
22 root causes of the Satartia incident, and all five of
23 those root causes are covered by current regulation.
24 And if PHMSA was concerned about the safety of current
25 projects, they would have potentially placed a

1 moratorium on construction. They haven't -- they
2 haven't done that. They're continually looking at
3 rulemaking.

4 And we have, as a potential witness, the former
5 administrator of PHMSA, the former CEO of PHMSA. So he
6 would probably be better equipped than myself to speak
7 to PHMSA's process.

8 But, again, the Satartia, Mississippi, incident,
9 the five root causes are currently covered by regulation
10 today. Nothing new would have changed those five root
11 causes.

12 Q. Okay. So your answer to my question is the
13 request to waive the procedure that Summit's making to
14 the PSC has nothing to do with the more stringent
15 regulations that are expected from PHMSA in 2024?

16 A. Well, I -- I -- that's true, but I disagree with
17 your characterization around more stringent. We haven't
18 seen those, and I don't think you have either, so we
19 can't speculate what they may be.

20 Q. Okay. Do you agree it's Summit's burden before
21 the PSC in this hearing and the other hearings to show
22 that this CO2 pipeline will have minimal adverse
23 effects?

24 MR. BENDER: I'm going to object insofar as it
25 calls for a legal conclusion, but I don't have any

1 problem if he answers the question with respect to his
2 experience.

3 ALJ HOGAN: Noted.

4 If you can answer in that capacity.

5 A. Well, I think generally, yeah, our obligation is
6 to minimize the impacts to the environment, the
7 communities that we -- where we traverse, etcetera.

8 ALJ HOGAN: Mr. Bakke, I'm just --

9 A. Potential impacts.

10 ALJ HOGAN: We've been going for about two --
11 almost two and a half hours. Are you close to done or
12 should we take a short break?

13 MR. BAKKE: A short break would be great. I
14 will tell you, as is often the case, the first witness
15 is the longest for -- in terms of cross-examination so
16 -- but I do have a bit more so a break would be probably
17 great.

18 ALJ HOGAN: Okay. Why don't we take a short
19 ten-minute break and we will reconvene at 11:00.

20 (Recess)

21 ALJ HOGAN: All right. Before we get started, I
22 just want to remind everybody, if you haven't signed the
23 sign-in or attendance sheet, it's sitting outside the
24 door up there on a table. And, again, the Commission
25 would ask you to please sign in. And if you would like

1 to offer public testimony, if you could indicate that on
2 the sheet, that would be great so that we have a better
3 idea of how many people want to testify today.

4 All right. Mr. Bakke, you can continue. Can
5 you turn your microphone on? I can't tell if it's on.

6 Q. (BY MR. BAKKE) Mr. Powell, when we broke, we
7 were speaking about the responsibility that Summit has
8 to show the minimal adverse effects relating to the
9 Summit pipeline, and you mentioned you agree that's part
10 of the responsibility of Summit; is that correct?

11 A. If I remember correctly, to the PSC?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. And would you agree with me that all of
15 the following would not be minimal adverse effects on
16 the citizens of Burleigh County and the state of North
17 Dakota: A leak of the CO2 pipeline at any location in
18 North Dakota?

19 A. Again, Mr. Bakke, you're asking me to speculate
20 about any location, a type of leak, the volume released.
21 And, again, it's a low probability we would have a leak.
22 You're asking me to speculate.

23 Q. Okay. What I'm asking you to do is assume a
24 leak occurs, and let's assume that leak occurs in
25 Burleigh County. Do you agree that the likelihood would

1 be, given the location Summit is proposing to route this
2 pipeline, it would not have a minimal adverse effect?

3 A. Again, you're asking me to speculate again.
4 What I did commit to is that we'll share with the
5 Commission our dispersement modeling results and our
6 risk assessment that's associated with those. So that
7 will clearly define what we perceive to be the risk.

8 Q. Okay. Do you agree with me that with a 24-inch
9 pipeline, that's a high pressure pipeline for a CO2 gas
10 line?

11 A. There are CO2 pipelines in this country that
12 operate at 3,000 -- over 3,000 pounds, but to maintain
13 CO2 in a dense phase or super critical state, it has to
14 be above 1,050 pounds, depending on the temperature
15 threshold. So our maximum operating pressure will be
16 2,183. That is a high pressure, but it is not
17 necessarily a high standard as you characterize it for
18 CO2 pipelines.

19 Q. Well, a 24-inch pipeline is a large CO2
20 pipeline, isn't it?

21 A. There are other large CO2 pipelines, but for a
22 CO2 pipeline, it may be a fair statement.

23 Q. Okay. If we take, for instance, a DGC pipeline,
24 that's a 14-inch and 16-inch pipeline in strictly rural
25 areas; correct?

1 A. I believe it's a 12-inch and a 14-inch. I don't
2 understand the relevance but...

3 Q. So you don't think the bigger the pipeline, the
4 greater the risk?

5 A. Well, as required by PHMSA, we have to do -- our
6 dispersement modeling has to be a worst case scenario,
7 complete sever of the pipeline, which is extremely
8 unlikely because the most likely release would occur due
9 to a third-party line strike. But that's what we model.
10 And so we model from 4-inch to 24-inch. In North
11 Dakota, it's 6-inch to 24-inch for the potential risk to
12 the area.

13 Q. Okay. Can we agree that the bigger the
14 pipeline, the greater volume of CO2 it can hold?

15 A. I would agree with that.

16 Q. Okay. And this pipeline you're projecting to be
17 able to keep full; correct?

18 A. Well, again, I mentioned previously that we're
19 designing it for 18 million tons and the current
20 throughput, as I sit here today, is nine and a half so
21 however you define "full."

22 Q. Okay. Is the goal of Summit to have full
23 capacity for this pipeline?

24 A. Yes.

25 Q. And in that case, if you have full capacity and

1 there's a leak, you're going to have a greater volume of
2 CO2 that escapes; correct?

3 A. Again, you're asking me to speculate on the size
4 of the leak, the location of the leak, etcetera.

5 Q. Okay. So if I --

6 A. I would agree that the larger pipeline carries a
7 larger volume. Larger diameter pipeline carries a
8 larger volume of CO2.

9 Q. And, thus, the greater the likelihood that, if a
10 leak occurs, it's going to be a greater volume leak.
11 True?

12 A. Again, you're asking me to speculate.

13 Q. Do you agree that a 24-inch pipeline through
14 north and east Burleigh County close to the city limits
15 and highly populated areas is too large given the safety
16 risk should a leak occur?

17 A. Well, I don't agree. And as you know, you've
18 got a larger diameter crude line that's running south of
19 the city of Bismarck and you've got other pipelines in
20 the area.

21 Q. In the application by Summit, they proposed to
22 bury this pipeline four feet below ground to the top of
23 the pipeline; is that correct?

24 A. Yes, which exceeds PHMSA depth requirements.

25 Q. Okay. Where is the frost line in Burleigh

1 County?

2 A. We do have a -- someone will testify that has
3 more expertise in the area than I do, but -- I'm not
4 going to speculate where the frost line is.

5 Q. Okay.

6 A. It's probably --

7 Q. Well, don't you have to -- in order for the
8 pipeline to be safe, don't you have to look beyond the
9 national standard of where you might bury a pipe in
10 Mississippi or California or Texas where they don't
11 achieve the type of cold temperatures we have here in
12 North Dakota?

13 A. Well, Mr. Bakke, I've constructed numerous
14 pipelines in the state of North Dakota, albeit on the
15 west side of the state, and we do have more talented
16 engineers on my team than myself, but, yeah, heave,
17 frost heave, is not an issue in the design and
18 construction of this project.

19 Q. Okay. Are there time periods where the frost
20 line goes below four feet in Burleigh County?

21 A. Again, heave will not be an issue with design
22 and construction of this project.

23 Q. Are you able to answer my question?

24 A. Again, I don't understand the relevance because
25 frost heave, regardless of the depth of the frost line,

1 will not impact the project.

2 Q. Okay. Do you know if you have an open winter,
3 in other words, a winter with little snow, that the
4 frost line can often go below four feet in Burleigh
5 County?

6 A. I don't know that.

7 Q. Do you agree that it would be -- not be a
8 minimal adverse effect if there was a leak in this
9 pipeline near one of the three public schools that are
10 within a mile and a half or two miles of proposed
11 pipeline route?

12 A. Again, I'm not going to speculate, Mr. Bakke.

13 Q. Has Summit done anything to try to determine
14 what the path of development is for the city of
15 Bismarck, which direction?

16 A. As I mentioned earlier, we looked at the
17 economic development plan that's available through 2045.
18 In talking to landowners, we're also well of -- aware of
19 other potential development areas.

20 Q. So what does the economic development plan for
21 Bismarck show in terms of the projected growth and
22 actual growth of the city of Bismarck, which direction?

23 A. Generally every direction, but it looks like
24 predominantly to the east.

25 Q. Okay.

1 UNIDENTIFIED SPEAKER: No.

2 Q. And what is the basis for you saying that?

3 A. Well, I'm -- do you have the map as an exhibit?
4 It shows the economic development plan. We've overlaid
5 our pipeline, the original route and the current route,
6 and it's well outside of that economic development plan.

7 Q. What consideration has Summit made, if any, in
8 regards to requests by the Burleigh County Commission
9 and others to reroute this pipeline further to the north
10 and further to the east of Bismarck?

11 A. I'm not aware of a formal request from Burleigh
12 County.

13 Q. So doesn't the ordinance that you saw saying
14 they want the distance moved four miles from the
15 extraterritorial limits of the city of Bismarck, that
16 doesn't signal to you that they want this pipeline moved
17 further to the north and east of Bismarck?

18 A. Well, as I mentioned previously, Mr. Bakke,
19 that's a recent occurrence, and we're evaluating that
20 ordinance so I have no opinion at this point.

21 Q. Well, is Summit evaluating whether this pipeline
22 should be moved further to the north and further to the
23 east of Bismarck or to some other more safe location?

24 A. I'm not going to comment on that ordinance at
25 this time. We haven't had an opportunity to evaluate

1 it.

2 Q. I'm not asking about the ordinance. I'm asking
3 about -- you're aware that requests have been made by my
4 client, Mr. Warford, to move this pipeline further to
5 the north, further to the east, somewhere else not so
6 close to the path of development in Bismarck; correct?

7 A. Well, as Mr. Warford and I actually talked about
8 in our offices in Bismarck, his concern as expressed to
9 me was that we not interfere with the City of Bismarck's
10 economic development plan. We already researched that
11 and we're well outside of that boundary of that plan.
12 So we can't assume what may happen beyond 2045. We're
13 making decisions based on the information we have for
14 the city of Bismarck.

15 Q. So is it your testimony Mr. Warford never asked
16 you or anybody else from Summit to move this pipeline
17 out of the path of development of Bismarck to the north
18 and east?

19 A. I don't remember his exact characterization, but
20 it is true that Mr. Warford would rather not have the
21 pipeline in his property. The rationale for that
22 Mr. Warford would have to tell you.

23 Q. So as you sit here today, am I correct in
24 understanding Summit has done nothing to evaluate or
25 analyze whether the safe thing to do would be to move

1 this pipeline someplace further to the north, further to
2 the east, or some other location not so close to
3 Bismarck?

4 A. Well, I disagree with your characterization. As
5 I mentioned, we've employed over 600 route variances in
6 the state of North Dakota. We've already moved the
7 pipeline route once to accommodate potential development
8 even outside of the 2045 proposed development boundary.
9 So, no, I don't anticipate that we'll move to
10 accommodate any further development that we don't know
11 will occur.

12 Q. Okay. So the route that Summit is requesting is
13 the only route it's willing to consider, at least in
14 Burleigh County?

15 A. Again, that's subject to the Public Service
16 Commission's opinion, but as I sit here today, the route
17 is the route.

18 Q. Right. And you're not willing to voluntarily,
19 without being told by the PSC or through some other
20 process, to alter or move that route in any way?

21 A. I will tell you that we've done an exhaustive
22 amount of work to determine what the potential risk is.
23 I don't know what the rationale or technical foundation
24 for Burleigh County's setbacks is, and until we evaluate
25 that, I can't speculate about what we may or may not do.

1 But as I sit here today, the route is the route subject
2 to PSC approval.

3 Q. Okay. Did Mr. Boeshans from Summit tell you
4 that Mr. Warford had requested that the pipeline be
5 rerouted further to the north and further to the east?

6 A. You mean Mr. Boeshans?

7 Q. Mr. Boeshans, yes.

8 A. Wade Boeshans and myself were in the same
9 meeting with Mr. Warford.

10 Q. Well, there were multiple meetings that
11 Mr. Warford appeared at at the request of Summit;
12 correct?

13 A. I was at one meeting with Mr. Warford and he
14 expressed -- we actually talked about the route and the
15 rationale behind the route in that meeting.

16 Q. Okay. So you weren't aware that prior to that
17 there had been other meetings where Mr. Warford had
18 requested the route to be changed further away from the
19 path of development in Bismarck?

20 A. I'm aware that Mr. Boeshans and Mr. Warford had
21 met previously. I'm not aware of the specifics from
22 those meetings.

23 Q. Okay. Could you take a look at W109? That's an
24 email from me to Mr. Boeshans copying in Mr. Skaare from
25 Summit and others from February 24, 2023, where we ask

1 for information in regards to any cost analysis or study
2 performed by Summit or any third parties as to the cost
3 associated with moving the pipeline location to the
4 north and northeast of Bismarck. Do you see that there?

5 A. I do.

6 Q. Okay. And we also asked to be advised, if no
7 cost analysis or study to relocate the pipeline to the
8 north and northeast of Bismarck has been performed by
9 Summit, does Summit plan to do such an analysis? Do you
10 see that there?

11 A. I do.

12 Q. Okay. Were you aware this letter had been sent
13 to Summit?

14 A. Absolutely.

15 Q. Okay. And Summit never responded; correct?

16 A. No. Mr. Boeshans responded. The premise of
17 this letter is incorrect. There was never a mention
18 with Mr. Warford about the cost of relocating the
19 pipeline. As I mentioned several times today, we've
20 relocated the pipeline over 3,000 times at a cost of a
21 hundred million dollars to Summit. So, again, we want
22 to do the right thing. So it doesn't matter
23 specifically about the cost if it made sense to relocate
24 the pipeline.

25 So in this case, there was never a discussion

1 around cost with Mr. Warford to relocate the pipeline.
2 So if I remember correctly, Mr. Boeshans responded to
3 you and just said that there was no current intent to
4 move the pipeline.

5 Q. When was this response made by Mr. Boeshans?

6 A. Via email.

7 Q. Okay. To who?

8 A. I don't remember a specific date. In response
9 to your law office.

10 Q. No. I never got an email. Do you have that
11 email with you today?

12 A. I do not.

13 Q. Okay. And is it your testimony that there was
14 never a discussion by the Summit representatives with
15 Mr. Warford telling him that they were considering
16 moving the route further to the north and further to the
17 east, but they were concerned about the costs associated
18 with doing that?

19 A. Again, in the meeting I was with, with Mr.
20 Warford --

21 Q. In any meeting.

22 A. -- that was never discussed. And just for the
23 -- for the commissioners' benefit, Mr. Boeshans is
24 accountable for the sequestration area. He's not
25 accountable for pipeline construction or routing. And

1 so while Wade and I work very closely together as
2 colleagues, for Wade to provide an opinion around the
3 cost would be surprising.

4 But, secondly, we've looked at rerouting the
5 pipeline numerous locations along the Missouri River.
6 And as you probably know, and I know the commissioners
7 know, the cultural features in that area are almost
8 prohibitive from routing a pipeline. So we've surveyed
9 10 to 15 miles north and south along that river and on
10 the west side of the river trying to find a suitable
11 route. So as you mentioned earlier in our discussion,
12 it impacts downstream the route where you cross the
13 river.

14 So I'm not aware of any discussion around cost
15 being a prohibitive factor. And as I sit here today,
16 I'm telling you that it wasn't.

17 Q. So is it your testimony that moving the route to
18 some other location further away from Bismarck is not
19 something that, from Summit's perspective, is a cost
20 issue?

21 A. Again, that's a wide range, but I'm telling you,
22 with respect to Mr. Warford's property, it was not an
23 issue.

24 Q. Okay. Well, I'm talking about the city of
25 Bismarck and Burleigh County. Is it your testimony that

1 it's not cost that Summit's relying on to say "We can't
2 move it to a more remote destination"? Is that what
3 you're telling us?

4 A. Well, I'm telling you in this process there are
5 many factors. So as I mentioned previously, we've come
6 to an agreement with 65 percent of the landowners for
7 almost 220 miles of this pipeline route. So there's an
8 expectation with those landowners. So to reroute, we
9 have to take all of that into consideration.

10 Q. Let's follow up on your comment about this
11 supposed exhaustive effort on cultural issues and the
12 appropriate location to cross the river and the route to
13 follow getting there. Is that what you're referring to,
14 is the architectural issues, the architectural sites,
15 the archaeological sites, those types of things?

16 A. Well --

17 Q. Native American artifacts, things of those
18 nature?

19 A. Well, we had to do three types of surveys. So
20 we had to do a land survey, an environmental biological
21 survey, and then a cultural survey. And that could
22 include paleontological -- I mean, there's -- we're --
23 we're in the proper forum for that. It can include
24 Native American artifacts, etcetera.

25 Q. Okay. Including archaeological?

1 A. Correct.

2 Q. Okay. And it's your testimony that something
3 fairly exhaustive was done by Summit studying that in
4 the proposed route through Burleigh County and to cross
5 the Missouri River?

6 A. I'm saying that along the pipeline, proposed
7 pipeline route to the PSC, yes.

8 Q. Would that include the crossing of the Missouri
9 River?

10 A. It would.

11 Q. Would it include Burleigh County, Emmons County?

12 A. Again, along the route as proposed to the PSC --

13 Q. Okay.

14 A. -- that would be correct.

15 Q. Why don't you turn to Exhibit W112. That's a
16 letter dated March 1, 2023, so less than two weeks ago,
17 from the State Historical Society of North Dakota in
18 relation to the Summit carbon pipeline in portions of
19 Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton,
20 Oliver, Richland, and Sargent counties; is that correct?

21 A. That's correct.

22 Q. Okay. And it says it's to the Public Service
23 commissioners?

24 A. Correct.

25 Q. Okay. And it says "Dear Commissioners. The

1 archaeological survey report we received regarding the
2 SCS Carbon Transport LLC's proposed Midwest Carbon
3 Express CO2 pipeline project does not meet the standards
4 and we have not yet received a revised report addressing
5 our concerns."

6 Have I read that correctly?

7 A. You have.

8 Q. Okay. It says "We have also been advised by
9 both the company and a member of the public that the
10 proposed route sent in with the siting application
11 differs from the area submitted to us for review. We
12 have not received details regarding those differences or
13 a survey report."

14 Correct?

15 A. Correct.

16 Q. Then it goes on to say "Due to inadequate
17 information, we are unable to assess the effect on
18 historic and archaeological sites."

19 So apparently your exhaustive work by Summit to
20 address archaeological sites, paleontology issues was
21 deemed by the State Historical Society of North Dakota
22 to be inadequate; correct?

23 A. Well, I think that's a mischaracterization,
24 Mr. Bakke. As I've mentioned many times, we've employed
25 numerous route variances. And when we change the route,

1 many times we have to resurvey and so it's real time
2 keeping up and communicating those changes to various
3 agencies, including the PSC, and so it's keeping
4 agencies like this State Historical Society updated and
5 current.

6 Q. Okay. Isn't this an example, Mr. Powell, of why
7 Summit should slow down and make sure everything is done
8 properly rather than requesting a waiver of the typical
9 procedure from the PSC?

10 A. No.

11 Q. Why don't you turn to Exhibit W113. And this is
12 a letter from -- to Mr. Schock, who is here today, a
13 director of the Public Utilities Division, also dated
14 March 3, 2023; is that correct?

15 A. That's correct.

16 Q. And the state geologist, Edward Murphy, for the
17 State of North Dakota from the Mineral Resources
18 Division?

19 A. Correct.

20 Q. Okay. And he indicates that the landslide
21 analysis needs to be conducted and each of the 17
22 localities should be evaluated to determine whether or
23 not they pose a future risk to the pipeline; correct?

24 A. Correct.

25 Q. And he identifies them on an attached sheet?

1 A. Correct.

2 Q. Okay. So another reason why this pipeline needs
3 to take a breath, make sure that everything is done
4 properly so that we don't risk a pipeline rupture due to
5 not meeting the landslide requirements in the 17
6 different locations where the pipeline is supposed to --
7 or being asked to be installed in North Dakota; correct?

8 A. Well, what I can tell you, Mr. Bakke, is that
9 within our original application, you can see that, I
10 believe it's less than 2 percent of the pipeline route
11 in North Dakota is in what's referred to as low
12 susceptibility to landslide areas. However, we do
13 appreciate information like this from Mineral Resources.
14 And in addition to the data bases that we've already
15 utilized to analyze the potential geohazard risk, we
16 will also consider this. So we appreciate that input,
17 and we have ample time to make that determination.

18 Q. What consideration has been given by Summit to
19 the increased taxes there will be for Burleigh County
20 residents if this pipeline goes in in the proposed route
21 requested by Summit?

22 MR. BENDER: I think I need to object from the
23 standpoint it seems awfully vague. Can you be more
24 specific?

25 MR. BAKKE: Sure.

1 Q. (BY MR. BAKKE) Emergency services. Is Summit
2 going to pay for those to have the required emergency
3 services to deal with a pipeline leak?

4 A. Well, I'm not -- I'm not the tax accountant.
5 And I'm not familiar with -- as familiar with the way
6 that the tax proportionment or allocation works in the
7 state of North Dakota, but I know we will pay sales and
8 use taxes and property taxes, etcetera, for the
9 pipeline. And then entities like Burleigh County can
10 take that in consideration when we're applying for
11 public use permits and other crossing type permits. But
12 I'm not aware of any additional cost to Burleigh County
13 specifically.

14 Q. So for training for individuals, I think you
15 said you assume all firefighters are trained and have
16 experience and knowledge in relation to responding to
17 CO2 pipeline leaks. I think you said that earlier in
18 your testimony today?

19 A. No, I didn't say that. I said that firemen are
20 -- typically have experience with CO2, but very few,
21 unless they're in an area on the west side of the state
22 where Denbury has a CO2 pipeline, or they're in an area
23 where Dakota Gasification has their pipeline, are they
24 familiar with CO2 being transported in a pipeline. And
25 what I also said earlier today is that we will provide

1 that training.

2 Q. Okay. So are there going to be increased costs
3 for emergency services that the taxpayers are going to
4 be asked to pay as a result of this pipeline route if
5 it's allowed through Burleigh County?

6 A. You'd have to be more specific Bakke --
7 Mr. Bakke.

8 Q. Okay. So you don't know?

9 A. I don't know what you're referring to.

10 Q. Okay. Well, there's costs associated with
11 having fire departments. Do you agree with that?

12 A. Yes.

13 Q. Having equipment to deal with different events
14 such as a carbon dioxide leak?

15 A. Well, as I mentioned earlier, we'll provide the
16 training and we'll supplement any equipment needs that
17 emergency responders have that -- specific to
18 potentially responding to an incident with our CO2
19 pipeline.

20 Q. So is Summit going to pay for fire departments
21 that might need to be built closer to the location of
22 the pipeline?

23 A. I find that unlikely, but if that's the case, we
24 don't know about it.

25 Q. Okay. Is Summit going to pay salaries and

1 benefits and other things for firefighters that may need
2 to be taken on to be prepared to deal with an event such
3 as a carbon dioxide pipeline leak?

4 A. Again, you're asking me to speculate. In the
5 unlikely event there were an incident, I don't know --
6 maybe you do. I don't know that there would be
7 additional resources required. But I did say, and I'll
8 commit to the Public Service Commission, that we'll
9 provide training at our expense and we'll supplement
10 first responders, fire departments, etcetera, with the
11 equipment they need to support us in the unlikely event
12 we have a release.

13 Q. Okay. So who is it that would respond to any
14 carbon dioxide leak in terms of emergency services in
15 Burleigh County should a leak occur?

16 A. And I haven't had those conversations with first
17 responders. I do have a colleague that has. But
18 typically it's your -- your fire, police, if there's an
19 -- if there's -- again, depending on the type of
20 incident, if there needs to be some protection of an
21 area or isolation of an area, and it may be the fire
22 department as first responders. It could be emergency
23 medical staff. But, again, there's -- CO2 is not
24 combustible or flammable. There's no combustion, no
25 fire. It's really just protecting the area where the

1 release may be.

2 Q. And that's why CO2 is so dangerous, isn't it?
3 It's because there's no odor to it. It's not visible.
4 It's not like natural gas, you can smell or where you
5 see the fire. People can be totally unaware if they're
6 going to be exposed to carbon dioxide; correct?

7 A. Well, you said -- you used the appropriate term
8 there, fire. There will be no fire. So you're correct
9 in saying the risk is the vapor itself, but there's also
10 vapor with natural gas, refined products, crude oil.
11 The difference is this vapor for CO2 is not combustible.
12 The vapor in those instances with those products is
13 combustible.

14 Q. Well, is the CO2 visible?

15 A. No. It's colorless.

16 Q. Okay. Can you smell the CO2?

17 A. No. It's odorless.

18 Q. And that's why it's so dangerous, because people
19 may not be -- know that they're exposed until it's too
20 late; correct?

21 A. Again, you're asking me to speculate about a
22 situation. As I've mentioned many times, we've done the
23 disbursement analysis and the associated risk assessment
24 and we're happy to share that with the commissioners.

25 Q. So if there's a carbon dioxide leak, which

1 emergency management entity is going to respond in
2 Burleigh County?

3 A. I would have to defer to our emergency response
4 professional that's had those conversations.

5 Q. So you don't know?

6 A. I haven't spoken to those individuals.

7 Q. Why don't you look at Exhibit W115. That's an
8 email I sent on March -- in -- on February 23, 2023, to
9 Dustin Theurer, and the Bismarck Rural Fire Department
10 responded to on March 6, 2023, inquiring about a
11 response by the Bismarck Rural Fire Department in
12 relation to carbon dioxide leak issues and whether or
13 not they had training to be able to respond to those
14 types of events. And Chief Theurer responds, quote,
15 "Our department has never responded to a carbon dioxide
16 leak or have training specifically with this type of
17 leak."

18 Do you see that there?

19 A. Yes.

20 Q. Okay. So we know that the fire department that
21 would be called to respond to this type of leak has no
22 training and has no experience, according to the fire
23 chief; correct?

24 A. Yes. And, Mr. Bakke, as I said just recently,
25 prior to putting this pipeline in operation, we will

1 work with all first responders, including Burleigh
2 County, to ensure that they have adequate training and
3 adequate equipment to respond.

4 Q. Well, is anybody else going to respond if
5 there's a carbon dioxide leak other than the Bismarck
6 Rural Fire Department?

7 A. Yes. Summit personnel.

8 Q. Pardon?

9 A. Summit personnel.

10 Q. Okay. And so is there going to be Summit
11 emergency response teams that are permanently going to
12 be in Burleigh County if the route goes in as requested?

13 A. There will be operations personnel that are
14 trained in emergency response.

15 Q. Okay. How many?

16 A. Mr. Bakke, we haven't finalized the staffing
17 plan. I did say earlier that we'll have 35 permanent
18 employees, about 150 permanent employees and
19 contractors, and we'll have a Bismarck presence with a
20 significant resource pool in the sequestration location
21 which is in close proximity.

22 Q. Well, how many emergency responders will be
23 permanently placed in Bismarck?

24 A. That will be determined with -- in concert with
25 the local emergency planners and first responders.

1 Q. Can you tell us, will it be two?

2 A. I can't tell you, Mr. Bakke.

3 Q. Five? 50?

4 A. I can't speculate.

5 Q. Okay. And then take a look at Exhibit 115a.

6 That is an email from me dated February 23, 2023, to
7 Joel Boespflug, the fire chief to the City of Bismarck,
8 asking the same questions we asked Fire Chief Theurer.
9 Do you see that there?

10 A. Yes.

11 Q. Okay. And his response on the second page is he
12 says, in response to the question about training and
13 experience with carbon dioxide, he says, quote, "As we
14 understand the proposed location for the pipeline, this
15 would not be in the jurisdiction of the Bismarck Fire
16 Department."

17 Correct?

18 A. Yes.

19 Q. Okay. And they'd only respond if there was a
20 mutual aid request or agreement in place and a request
21 from the North Dakota Department of Emergency Services;
22 correct?

23 A. Correct.

24 Q. Okay. So doesn't that tell us, is that these
25 residents in Burleigh County that are close to the

1 pipeline would have to rely strictly on a volunteer
2 rural fire department in addition to whatever emergency
3 responders Summit may have here on a permanent basis, if
4 any?

5 A. What I can tell you is we have a regulatory
6 requirement to develop an emergency response plan that
7 would identify resource needs and how, as I mentioned
8 earlier, that would involve a structure and guidance
9 around how an incident would be handled and, as I
10 mentioned earlier also, so it's a effective and
11 coordinated response. So that's a case-by-case basis
12 along the entire length of the pipeline.

13 Q. Let's turn to another topic and that is common
14 carrier status. Is Summit asking the PSC to --

15 MR. BENDER: Your Honor -- just excuse me,
16 Randy.

17 Your Honor, I think we're going to start to get
18 into an area that the Commission has absolutely no
19 jurisdiction in whatsoever and I'm going to object to
20 this line of questioning and probably instruct the
21 witness not to respond.

22 MR. BAKKE: And here's why this is relevant,
23 because he brought up the issue of eminent domain, and
24 common carrier status is, I think, the reason -- or the
25 reason they're requesting that, is so that they can try

1 to exercise eminent domain. He talked about that so I'm
2 just following up on his answers. I'll be brief.

3 THE WITNESS: I don't remember mentioning
4 eminent domain.

5 MR. BENDER: Yeah, I don't recall that either.

6 MR. BAKKE: He did.

7 ALJ HOGAN: I don't recall that, but let's -- I
8 agree and I don't see where the Public Service
9 Commission has jurisdiction over this area or issue
10 so --

11 MR. BAKKE: I can save that because I did hear
12 him say that there was someone else from Summit who was
13 going to be talking about eminent domain in the
14 procurement of easements so I think it will come up
15 again so I can move to another topic. So --

16 THE WITNESS: Judge, I hate -- I hate to be
17 picky here, but I don't remember ever using the phrase
18 "eminent domain."

19 ALJ HOGAN: I don't recall that either. I think
20 maybe the reference is to lease or acquisition, easement
21 acquisition, and I don't know if that's --

22 MR. BAKKE: I think that's probably --

23 THE WITNESS: I just want to be clear for the
24 record that he's suggesting that I said that and I did
25 not.

1 MR. BAKKE: Yeah, easements is, I think, what he
2 was talking about.

3 ALJ HOGAN: Okay.

4 MR. BAKKE: I -- the procurement of easements.
5 And I think he said somebody else was going to be
6 addressing that from Summit so I can ask the questions
7 of them.

8 Q. (BY MR. BAKKE) So let's talk about the 32
9 ethanol plants. Are they paying to connect to the
10 Summit pipeline?

11 A. No.

12 Q. Okay. Are they paying anything to put their CO2
13 into the pipeline and have it stored permanently at the
14 storage location near Center, North Dakota?

15 MR. BENDER: Your Honor, I'm going to object.
16 What he's trying to do is accomplish the same thing and
17 just not talk about common carrier. He's asking the
18 type of questions that get into that issue so I'm going
19 to object and instruct the witness not to answer.

20 ALJ HOGAN: Can you address relevance?

21 MR. BAKKE: Well, I think part of the relevance
22 here is in relation to the minimal adverse effect issue
23 and the benefit to the state and the benefit to the
24 citizens. If they're not paying anything, how can there
25 possibly be any benefit to the citizens or benefit to

1 the state? It sounds to me it's strictly for the
2 benefit of this private company, Summit.

3 ALJ HOGAN: And I -- just in the interest of
4 time, Mr. Bakke, I think we've gone over -- I mean, I've
5 heard questions about this area and, you know, the --
6 only one ethanol plant being in North Dakota and the
7 rest of them being out of state. So, again, if we can
8 move on.

9 MR. BAKKE: Sure. And what I -- to be more
10 specific, I was trying to follow up on his comments
11 where he talked about the financial benefits. He's
12 trying to claim there's some financial benefits to the
13 state, to the citizens. He talked about the Tharaldson
14 Ethanol plant. I'm just following up on that --

15 ALJ HOGAN: Okay.

16 MR. BAKKE: -- to see what are they paying.

17 ALJ HOGAN: Can you be brief on that because I
18 think we have covered it.

19 MR. BAKKE: Sure.

20 Q. (BY MR. BAKKE) So is the Tharaldson Ethanol
21 plant paying anything to deposit their CO2 into the
22 pipeline?

23 A. No.

24 Q. Okay. Has Summit done anything to try to
25 determine what effect it will have on Burleigh County

1 property values for the properties where it is proposing
2 to install the pipeline?

3 A. I think that's -- I mean, I can make a general
4 -- I can provide a general response, but I think that's
5 better suited for our land acquisition expert.

6 Q. Okay. So what's your general response?

7 A. My general response is we have -- we have
8 performed an economic impact study. Ernst & Young
9 performed one for us.

10 My general response, again outside of Burleigh
11 County or excluding Burleigh County, just generally,
12 that a pipeline in rural areas, especially in
13 agricultural areas, which I realize Burleigh County may
14 or may not have agricultural, that the value of the
15 property is really defined by or driven by the use of
16 the property. So if it's an agricultural use, it's more
17 about the yield of the crops that are grown on that
18 property as opposed to whether or not it has a pipeline
19 running under the ground that you won't know is there.

20 Q. Okay. So getting to my question, has any
21 analysis been done by Summit on the effect of real
22 estate values for properties where the pipeline goes
23 across? Has anything been done in that regard?

24 A. Specific to Burleigh County, I'm not aware.

25 Q. Okay. And specific to any of the properties in

1 North Dakota?

2 A. Again, I'm not the expert in that area,
3 Mr. Bakke.

4 Q. So you don't know?

5 A. I said I didn't know.

6 Q. Okay. Has any analysis or study been done by
7 Summit in relation to how real estate values will be
8 affected for adjacent property owners to where the
9 pipeline is placed?

10 A. I'm not aware of any.

11 Q. One of the issues that the PSC will be
12 addressing deals with ensuring continuing system
13 reliability and integrity and ensuring that energy needs
14 are met and fulfilled in an ordinary and timely fashion.
15 And am I correct in understanding this CO2 pipeline
16 provides no energy whatsoever?

17 A. You're talking about do we generate electricity?

18 Q. Is that CO2 product used to produce energy of
19 any type? Electricity, whatever?

20 A. No.

21 Q. Okay. So it doesn't fulfill any energy needs
22 for the state of North Dakota; correct?

23 MR. BENDER: I'm going to object insofar as it
24 calls for a legal conclusion, but other than that, in
25 your experience, I don't have any objection.

1 ALJ HOGAN: The objection is noted.

2 You can answer.

3 A. Not that I'm aware of.

4 Q. Does Summit, other than the 500-foot setback you
5 referred to, is it proposing any setback other than
6 that?

7 A. You're talking about to a specific habitable
8 structure or what are you referring it to?

9 Q. Well, let me give you an example. This pipeline
10 passing through rural Emmons County where there's no
11 residents possibly for miles presents a far different
12 situation than northern Burleigh County where there's
13 many residences, many housing developments, businesses,
14 things of that nature. Has Summit given any
15 consideration to whether the setback in a rural area
16 should be different than a more populated area where
17 there's many people who live and work there?

18 A. As I mentioned earlier, Mr. Bakke, there are
19 many, many considerations when you're routing a
20 pipeline. So setback is one, but it also depends on, as
21 I mentioned, federal grasslands, bird migratory areas, a
22 permitted water well on someone's property, all those
23 types of things. And so that's what we typically try to
24 use as a guidepost to route the pipeline.

25 Q. In terms of rerouting the Summit pipeline, I

1 know you said that's not on the table, but you told us
2 that the cost of this project is presently \$5.5 billion;
3 is that correct?

4 A. Yes.

5 Q. Okay. Would you agree that if the pipeline was
6 rerouted to a different, more remote location in
7 Burleigh County, those costs would be minor in
8 comparison to the overall cost of this project?

9 A. As I mentioned earlier, Mr. Bakke, we already
10 spent over a hundred million dollars rerouting the
11 pipeline. Again, it's other considerations that we have
12 to manage.

13 Q. As part of this plume modeling, does that
14 include any assessment of how far away from the pipeline
15 the CO2 would move depending on different conditions
16 such as wind direction, wind speed, those types of
17 things?

18 A. Yes.

19 Q. Can you tell us how far away the furthest point
20 would be under the modeling that it shows the CO2 gas
21 would move?

22 A. As I mentioned on numerous occasions, you're
23 asking me to speculate. It would depend on the cause of
24 the release, the volume in the pipeline, etcetera.

25 But as I mentioned too, we considered the worst

1 case scenario, which is a guillotine failure, and we
2 have those results in the associated risk assessment and
3 we're happy to provide that to the Public Service
4 Commission. I will also say that that study is updated
5 every month because as we continue to acquire right of
6 way, as we continue to process these micro route
7 variances on individuals' property, we update the model
8 to make sure that the risk remains the same or similar.

9 Q. Well, are you willing to disclose that worst
10 case scenario to the public and the people in Burleigh
11 County who would be close to this route where the
12 pipeline is proposed?

13 A. As I mentioned earlier, Mr. Bakke, pipelines are
14 considered critical infrastructure and so we can't
15 disclose things like our integrity management -- I mean,
16 our emergency response plan, I'm sorry, to the general
17 public or the dispersement model or the output from the
18 dispersement model.

19 UNIDENTIFIED SPEAKER: (Inaudible).

20 ALJ HOGAN: I'm going to ask the public, we
21 can't be having public comments during our hearing.
22 That's not how this process works. So I'd ask that the
23 people that are watching today, please refrain from
24 commenting. Thank you.

25 Q. (BY MR. BAKKE) What do you rely on, Mr.

1 Powell, specifically to say that Summit can't disclose
2 information showing the different possible scenarios in
3 the event of a leak and the effect on the citizens of
4 Burleigh County?

5 A. I mean, I -- I think that question is better
6 suited for our other witness that's a former PHMSA
7 administrator that's better versed in why it's
8 classified as critical infrastructure.

9 Q. So you don't even know if it is classified as
10 critical infrastructure?

11 MR. BENDER: That wasn't his testimony.

12 Q. Is that what you're saying?

13 A. I did not say that it wasn't.

14 Q. Okay. So tell me how it is.

15 A. I just said that it's classified as critical
16 infrastructure. And that's a PHMSA characterization.
17 So I think the witness that is -- is a former PHMSA
18 administrator may be better equipped to answer that
19 question.

20 Q. So you're relying on somebody else who has told
21 you that you can't share that information with the
22 public of the -- what might happen in the event of a
23 leak?

24 A. That's not what I said, Mr. Bakke.

25 Q. Is that what you're saying?

1 A. No.

2 Q. What happens if there's a rupture of the pipe
3 under the Missouri River?

4 A. Well, that's obviously a very unlikely scenario.
5 The pipe that will be installed under the Missouri River
6 will be at a significant depth below the mud line. It
7 will be a heavier-wall pipe. It will not only have an
8 FBE external coating, it will have an abrasive-resistant
9 overcoat. So it's a very unlikely scenario that we
10 would have a failure under the Missouri River.

11 Q. Okay. And my question is what happens if there
12 is a leak under that unlikely event?

13 A. Mr. Bakke, you're asking me to speculate how
14 much volume is in the pipe, what's the size of that
15 release or the -- the damage to the pipe, what's the
16 cause of the damage to the pipe. I can't speculate on a
17 scenario with no boundaries or no specifics.

18 Q. Are there certain assumptions that we can make
19 if a leak would occur under the Missouri River?

20 A. Again, assumptions based on what premise?

21 Q. Okay. For example, can we agree that the
22 Missouri River is a low-lying area, perhaps the
23 lowest-lying area in this part of Burleigh County?

24 A. I would agree.

25 Q. Okay. So what consideration has Summit given,

1 if there's a leak there, what will happen to the
2 residents who live along the Missouri River?

3 A. Again, Mr. Bakke, I'm not going to speculate.

4 Q. Okay. Well, was that part of your plume study,
5 that they analyzed if the leak occurred on the Andahl
6 property under the river at that location just north of
7 Bismarck, different scenarios of what the effect would
8 be?

9 A. Again, we've assessed or modeled a potential
10 release in a worst case scenario in all high consequence
11 and could-affect areas including potential migration.

12 Q. Okay. Did that --

13 A. Whether that's under a body of water or not.

14 Q. Okay. Did that worst case scenario include
15 studying what would happen if the leak occurred under
16 the Missouri River?

17 A. As I just said, Mr. Bakke, we've analyzed a
18 release scenario under all -- in all high consequence
19 and could-affect areas.

20 Q. Okay. But was there one that was specific to
21 the Missouri River?

22 A. Again, if it falls under a high consequence or
23 could-affect area, the answer is yes.

24 Q. And was any study done to determine what impact
25 that type of leak under the Missouri River would have on

1 the South Central Regional Water intake just a couple
2 miles south along the Missouri River?

3 A. There have been studies on releases of CO2 in a
4 body of water. Whether that water is static or whether
5 that water is transient, to species in the water,
6 whether it's fish, whether it's stationary species like
7 mollusk, those studies have been performed.

8 Q. Okay. And my question was in regards to the
9 water intake. And let's take either the South Central
10 or the City of Bismarck water intake. Any study done on
11 that if there's a leak under the Missouri River of the
12 pipe?

13 A. I'm not familiar with one.

14 MR. BAKKE: I think that's all the questions I
15 have. Thank you.

16 ALJ HOGAN: All right. Thank you.

17 Mr. Leibel, do you have any questions?

18 MR. LEIBEL: I do have a few questions. I think
19 I can probably -- I see it's about noon. Maybe like ten
20 minutes --

21 ALJ HOGAN: Go ahead.

22 MR. LEIBEL: -- if that's okay.

23 ALJ HOGAN: Yes.

24 MR. LEIBEL: Okay.

25

CROSS EXAMINATION

1
2 BY MR. LEIBEL:

3 Q. Mr. Powell, my name is Steve Leibel. I
4 represent a group of intervenors who are affected
5 landowners, mostly from north of Bismarck here. And I'm
6 just going to follow up on a few questions that
7 Mr. Bakke had.

8 So as I understand it, the proposed pipeline is
9 2,060 miles; is that right?

10 A. That's correct.

11 Q. And it is the largest -- or longest CO2 pipeline
12 in the United States; is that correct?

13 A. When constructed, it would be. Yes.

14 Q. Okay. Are you aware of any pipeline, CO2
15 pipeline, in the world that is longer than the one that
16 Summit is proposing?

17 A. Again, I'm not familiar with what may or may not
18 be constructed outside of the United States --

19 Q. Okay.

20 A. -- with respect to CO2.

21 Q. Okay. And the pipeline that you're proposing
22 ranges from, I believe, 4 inches to 24 inches at the
23 wide point. Is that accurate?

24 A. Correct.

25 Q. And so the section of the pipeline that is

1 wrapping around Bismarck is exclusively 24 inches?

2 A. That's correct.

3 Q. So basically the 24-inch pipeline is going to
4 have the highest volume of CO2 any place throughout
5 Summit's proposed pipeline?

6 A. That's fair.

7 Q. Okay. So part of what you're asking this
8 Commission to authorize is the most high volume part of
9 the largest CO2 pipeline in the United States around
10 Bismarck?

11 A. Well, I think there are CO2 pipelines in the
12 United States of similar diameter, but in our project,
13 24-inch is the largest diameter pipeline. But the
14 majority of the pipe, 55 percent of the pipeline in
15 North Dakota, is smaller diameter. But you're correct
16 in the main line that traverses or routes east and
17 northeast of Bismarck is 24-inch in diameter.

18 Q. Okay. And so my earlier question, that the
19 pipeline that's going to wrap to the east and north of
20 Bismarck is the highest volume pipeline for CO2 that
21 you're proposing along your entire route?

22 A. Within our pipeline, it, because it's the
23 largest diameter, would be the highest volume capacity,
24 if that's your question.

25 Q. Now, earlier there was some discussion about a

1 500-foot setback, and I believe you said that is based
2 upon a requirement of the PSC. Is that accurate?

3 A. That's correct.

4 Q. Now, that 500-foot setback requirement, that is
5 for pipelines generally, that's not specific to a CO2
6 pipeline; correct?

7 A. I believe that's correct.

8 Q. And Summit, you've said a few times, has
9 performed a dispersement model. Is that accurate?

10 A. That's correct.

11 Q. And a dispersement model is essentially if there
12 is a catastrophic failure, I believe you called it a
13 guillotine event, if there is a catastrophic failure,
14 how big the cloud of gas would -- the plume would be
15 from the site of the failure?

16 A. Correct. But just for clarity, we've actually
17 performed two different analyses. One is a guillotine
18 failure, which is required by PHMSA. The other, which
19 we feel is a more likely event, because most releases in
20 this country for pipelines are typically caused by
21 third-party line strikes, so individuals that don't call
22 811 and without permission dig over a pipeline, so we've
23 actually modeled a much smaller puncture, if you will,
24 to all sizes of the pipeline to assess the potential
25 risk associated with that as well.

1 Q. Okay. And I believe you said that, in your
2 opinion, the 500-foot setback is adequate. Is that
3 accurate?

4 A. Yes.

5 Q. And when we're talking 500 foot, we're talking
6 about 500 foot on each side, so a thousand feet total is
7 the swath; is that correct?

8 A. Well, I believe the way it's defined is it's
9 500 feet from a habitable residence or structure.

10 Q. Okay. So when we're talking about the pipeline
11 itself, 500 feet on each side, we shouldn't see any
12 residences within that thousand feet?

13 A. On 500 feet on either side of the centerline of
14 the pipeline, that's correct.

15 Q. Now, what did Summit's dispersement model -- you
16 know, you said that the PSC one was adequate. What did
17 Summit's dispersement model say about a 500-foot
18 setback?

19 A. Again, I'm not going to speak to specifics of
20 the dispersement model, but we will share the results
21 obviously with the PSC.

22 Q. Could you at least say whether 500 feet of the
23 rupture is bad for a human?

24 A. I will say this, that the risk and the potential
25 risks to the environment and equally or more importantly

1 to humans and animals in the area of our pipeline is
2 very important. And so where we are -- where we are
3 routing our pipeline, we're comfortable with the risk
4 associated with that. And then it's obviously to the
5 PSC to determine if they agree.

6 Q. Now, you said that a little bit earlier too and
7 I was going to ask you about that. You said that you're
8 comfortable with the risk. And essentially what you're
9 saying is you're comfortable with the risk to us; right?

10 A. That's fair.

11 Q. And you're saying that based upon a report, a
12 dispersement report, that as of today you haven't even
13 provided the PSC?

14 A. Well, that's based on a lot of considerations.
15 One is if you -- I know you remember, and several times
16 in this conversation we've talked about regulatory
17 requirements on design, construction, and operation of a
18 pipeline from the -- at the state level and at the
19 federal level. And so we're designing and, in many
20 cases, exceeding those requirements. Our leak detection
21 system exceeds that requirement. Our depth of cover
22 exceeds those requirements. We've performed a fracture
23 control plan that underpins the thickness of the
24 material we -- and the quality of the material that
25 we're manufacturing the pipe from.

1 The dispersement model is just one element that
2 we're using to make sure that we feel the risk is
3 acceptable. But the risk is also acceptable to the
4 regulators who approve our pipeline, not only the PSC
5 but the other state agencies involved in its footprint
6 and the federal government. It will be involved --
7 PHMSA will be involved at many steps along the route of
8 this -- along the development of this pipeline to ensure
9 that they're comfortable with it.

10 So you're right, it is myself, but there are
11 other people and other agencies and other stakeholders
12 that have to be comfortable with it as well.

13 Q. Now, you said that in places this pipeline will
14 be as deep as four feet. And I would assume, when we're
15 talking about north and east of Bismarck, I mean are you
16 familiar how deep a footing has to be for a building in
17 this area?

18 A. You're getting back to the conversation we had
19 about the frost line. I will just correct something you
20 said. The minimum depth will be four feet. There are
21 many areas along this pipeline route, like there's road
22 crossings that has -- there's a requirement in North
23 Dakota that we have to be deeper. Drainage areas, it
24 has to be deeper. And, quite frankly, many landowners
25 have asked us to put it at five feet, six feet, top of

1 cover, and we accommodate that. So there's many areas
2 where we'll be -- four feet will be the absolute
3 minimum. There are many areas where it will be deeper.

4 Q. Well, and I'll tell you, sir, part of the
5 testimony you're going to hear from some of these
6 landowners is that they purchased this property or own
7 this property north of Bismarck with the hope of
8 developing it at some point and putting houses there.
9 Obviously, if a pipeline is four feet or even six feet,
10 that's going to dramatically limit what structures could
11 be built, if you were willing to build one within
12 500 feet of the pipeline anyway; right?

13 A. Yes. We -- we restrict permanent structures
14 over the 50-foot permanent right of way that we will
15 maintain, but, yeah, the -- either the city or the
16 county or the state may have other requirements for
17 developers.

18 Q. So we don't even know as we sit here today
19 whether Burleigh County will ever allow a structure to
20 be built within 500 feet of a pipeline; right?

21 A. I can't speak to Burleigh County and what they
22 may or may not allow.

23 Q. Well, and I'm sure you understand that some of
24 us maybe aren't comfortable that you're okay with the
25 risk to us. I mean, you understand that; right?

1 A. Well, as I just mentioned, I'm just one piece of
2 the puzzle. I mentioned all of the other stakeholders,
3 including the PSC, including PHMSA, including other
4 stakeholders and regulators that had to be comfortable.
5 So at the end of the day, it really doesn't matter if
6 I'm comfortable. They're the ones that grant us the
7 authority to construct and operate the pipeline.

8 Q. Now, earlier you testified that Summit had
9 secured rights from 65 percent of the landowners. Were
10 you talking landowners or 65 percent of the route?

11 A. It's -- it's -- it's approximately equal in
12 North Dakota. I -- I usually gauge it by miles. So
13 like we've got 545 landowners, if I remember correctly,
14 in North Dakota and we secured about 350 of those,
15 easements from 350 of those. The land -- or the person
16 who manages our land acquisition organization may or may
17 not testify today, but he gauges progress in tracts.
18 When you hear me speak, it's usually mileage.

19 Q. The last question I wanted to ask about is one
20 of the things I know that landowners have concerns about
21 is Summit's ability financially to deal with problems
22 and who has responsibility in the event of a
23 catastrophic failure. I haven't heard any information
24 or testimony about that, and I was wondering if you
25 could identify -- for example, who are the people that

1 are standing behind the entity that will operate this
2 pipeline?

3 A. Well, Summit Ag has many investors. If I
4 remember correctly, and this may not be accurate, but
5 400-plus investors, but there are some more high profile
6 investors, especially in North Dakota, like Continental
7 Resources is a big developer in the western side of the
8 state. But like any other private or public company,
9 you know, we raise money to fund, to raise the capital
10 to construct the pipeline.

11 Q. Will Summit maintain a bond in the state of
12 North Dakota for any problems with its pipeline?

13 A. If required.

14 Q. And one last thing. You had testified earlier
15 that people won't even know the pipeline is there.
16 These individuals that you -- these ten people you
17 talked about, including one person that agreed to have
18 the pipeline within 500 feet of their residence, did
19 someone talk to these people about what the risks are of
20 having that pipeline right under their house before they
21 took an easement from them?

22 MR. BENDER: I'm going to object to the
23 characterization of 500 feet being right under the
24 house.

25 A. I would tell you that -- I'm sorry.

1 ALJ HOGAN: That comment or objection is noted.
2 You can answer.

3 A. Yeah, I -- I've had many, many conversations
4 with landowners personally across this footprint.
5 Mr. Bakke represented -- he referenced Mr. Andahl. I
6 sat at Mr. Andahl's table earlier this year and had
7 several conversations with him about safety and the risk
8 associated with that, and his sister Denise, by the way.

9 And so, yes, I mean, these are voluntary
10 easements. And many landowners -- all landowners have
11 different issues. Some, it's all about safety and that
12 concern and so we -- we do our best to address and avail
13 those concerns. And when they sign a voluntary
14 easement, I mean, the assumption is that they're
15 comfortable. Some are just concerned about their crop
16 yield. Some are concerned about reclamation. There's
17 very -- you know, there's various. Some are concerned
18 about their property values. So it's various concerns.
19 But, yes, we have those conversations.

20 Q. And you haven't shared with any of them your
21 dispersement model; correct?

22 A. No.

23 MR. LEIBEL: I have nothing further.

24 ALJ HOGAN: All right. Thank you.

25 Mr. Pranis, did you have any questions for Mr.

1 Powell?

2 MR. PRANIS: No, Your Honor.

3 ALJ HOGAN: All right. I'm thinking we'll break
4 for lunch before commissioner questions. Yes? Okay.
5 All right. We're going to take our lunch break. We
6 will reconvene at 1:00.

7 (Recess)

8 ALJ HOGAN: All right. Are we ready up there?
9 Good. All right. We are going to get started again.
10 We will start with commissioner questions for Mr.
11 Powell.

12 Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: Thank you, Your Honor.

14 And, Mr. Powell, the first thing wasn't even on
15 my list of questions from the application that -- but it
16 came from your testimony this morning. You said at
17 least once, but I think multiple times, that the
18 500-foot setback from occupied structures is like the
19 PSC's rule or something. I don't remember -- you
20 assessed it to us. Do you know whether that is a state
21 law as opposed to our rule?

22 THE WITNESS: I do not, Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Would it surprise you
24 if I told you it's the state law?

25 THE WITNESS: No, it would not.

1 COMMISSIONER CHRISTMANN: Okay. Then I'm going
2 to jump into your application and immediately jump all
3 the way to page 1 where you're requesting a 300-foot
4 corridor. And in recent years we've really tried to
5 tighten up pipeline corridors. And I'm just trying to
6 think back, I was going to review some of our more
7 recent pipeline projects, but I think 200 is kind of a
8 pretty common rate lately. Would you think you would
9 object to a 200-foot corridor instead of 300 wherever
10 this ends up being if it is ultimately approved?

11 THE WITNESS: You mean after we have approval
12 for the route?

13 COMMISSIONER CHRISTMANN: Well, they'll likely
14 come at the same time, but a 200-foot corridor to work
15 in and the route within that?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER CHRISTMANN: And later, on page 13,
18 it requests a 100-foot route buffer. And we've been
19 doing those much less than that. Do you think that
20 could be reined in?

21 THE WITNESS: Yes, sir.

22 COMMISSIONER CHRISTMANN: On page 4 of the
23 application and then -- well, subsequently in the maps
24 too, because this isn't all just about north and east of
25 Bismarck, when you get out into the Morton and Oliver

1 County areas and get east of what would be parallel with
2 Mandan a ways, there's a spot where the pipeline splits
3 and goes west and northwest to the sequestration field
4 and generally pretty straight north up to near the
5 Minnkota Cooperative plant. Will we be getting any
6 testimony from Minnkota about that or are you testifying
7 that this is at their request? Or what's the
8 relationship there?

9 THE WITNESS: Yes. And pardon me, Commissioner,
10 I may misspeak about the commercial arrangement, but we
11 have a partnership with Minnkota to develop -- Minnkota
12 Energy to develop those two sequestration sites, Tundra
13 East and Tundra West, and so that plus or minus seven
14 miles of pipe that branches off the main line and runs
15 north toward the Minnkota property. So we're -- that's
16 under our purview until it gets on the Minnkota Energy
17 property, and then they're essentially dictating where
18 it gets routed, if that answers your question.

19 COMMISSIONER CHRISTMANN: Okay. Will they be
20 testifying at all?

21 THE WITNESS: Not that I'm aware of.

22 COMMISSIONER CHRISTMANN: Okay. And as you work
23 your way into -- well, as the application goes and it
24 gets to the Minnkota property, does it cross anything
25 that is within the BNI Coal mine permit?

1 THE WITNESS: Commissioner Christmann, that, I
2 don't know. We can confirm. I don't know that as I sit
3 here today.

4 COMMISSIONER CHRISTMANN: If it is, you know,
5 that, we oversee the permitting of coal mines, but the
6 Federal Office of Surface Mining oversees our oversight
7 over that, and so that is something that we have to
8 watch really carefully.

9 THE WITNESS: Okay.

10 COMMISSIONER CHRISTMANN: And I don't know
11 whether it's possible to go through the mine permit or
12 not, I don't know, but that's something that will need
13 to be explored along the way here.

14 UNIDENTIFIED SPEAKER: We'll explore that and --

15 MR. BENDER: I don't know if we're going to be
16 able to get Minnkota to testify, but I'm sure that we
17 can get them to prepare some sort of letter indicating
18 how they feel about the application and then also
19 provide the Commission with a map that would indicate
20 where the BNI Coal lands are at and provide that for the
21 Commission.

22 COMMISSIONER CHRISTMANN: Okay. And, by the
23 way, I'm kind of jumping around asking you everything,
24 so if some of these go to another witness, I'm -- it's
25 fine, just defer them.

1 On page 9 you mention that access -- temporary
2 access roads will be removed unless otherwise agreed
3 upon by landowners. Will the arrangement to leave them
4 also take PSC approval or is that going to be an
5 exclusive landowner arrangement?

6 And the reason I ask is, on wind farm
7 developments, it also requires our approval so the
8 companies don't just come in and kind of buy people off
9 rather than reclaiming and then years later you have an
10 erosion issue.

11 THE WITNESS: Senator -- I mean, Commissioner
12 Christmann, excuse the slip, at the risk of punting
13 here, I would prefer that Micah Rorie, who's our land
14 acquisition expert, he answer that question because he's
15 better versed than I am to answer that. I understand
16 the question, but he would know better than myself.

17 COMMISSIONER CHRISTMANN: Okay. On page 14,
18 near the bottom of the page there's a topsoil
19 segregation section. And starting in the middle of
20 the third line, it says "Topsoil will be segregated
21 where required by state regulation or as required by the
22 landowner."

23 Where does state regulation require it and where
24 not? And I understood your testimony earlier to mean
25 you will always segregate it.

1 THE WITNESS: Yeah. And, again, regrettably, I
2 don't know the answer to your first question, but the
3 second question -- or the answer to the second part is
4 we have just chosen to keep it segregated in
5 construction generally.

6 COMMISSIONER CHRISTMANN: Okay. And jumping
7 over a line, you're familiar with our winter
8 construction requirements, and there's been some studies
9 by the Extension Service and NDSU, and your contractors
10 are going to be familiar with those if winter digging is
11 done?

12 THE WITNESS: We will be, yes.

13 COMMISSIONER CHRISTMANN: And I did, by the way,
14 appreciate the comment about removing the topsoil before
15 it's frozen. That's, I think, important.

16 On page 29, there's a table there with about
17 maybe 15 or so perennial streams crossed by the project.
18 Do you see that?

19 THE WITNESS: Yes, I do.

20 COMMISSIONER CHRISTMANN: So in the right
21 column, some of them are open cut and some are HDD.
22 What is the difference? What determines which ones you
23 open cut and which ones you bore?

24 THE WITNESS: In my opinion, we've got a couple
25 other witnesses that may have a more valuable opinion,

1 Commissioner. In my opinion, it depends on when water's
2 present, you know, what the body of water is used for.
3 For instance, like the Sheyenne River's an HDD. It's
4 just a matter of is there -- is there regulatory
5 prohibition to one method versus the other, and then
6 from a constructibility perspective, what makes sense
7 without affecting, you know, the body of water itself.

8 COMMISSIONER CHRISTMANN: I think I'd like if
9 one of the other witnesses -- because I'd like the
10 specifics on how we're determining that --

11 THE WITNESS: Sure.

12 COMMISSIONER CHRISTMANN: -- to see if we might
13 end up disagreeing on one or more of them.

14 THE WITNESS: Sure.

15 COMMISSIONER CHRISTMANN: On page 52, it says
16 there are -- this is for the whole project, not just
17 Burleigh County -- or not just even these western three
18 counties, but there are eight domestic structures and
19 one business were identified within 500 feet.

20 When you testified this morning, I don't know if
21 you misspoke or I misunderstood or if this has changed
22 some. I understood you to say that the route has been
23 altered to get all but one of those to more than
24 500 feet; is that correct?

25 THE WITNESS: That's correct.

1 COMMISSIONER CHRISTMANN: Do you mind, is the
2 one that's within 500 feet in one of these three western
3 counties?

4 THE WITNESS: It's in Sargent --

5 COMMISSIONER CHRISTMANN: In Sargent?

6 THE WITNESS: -- if I remember correctly.

7 COMMISSIONER CHRISTMANN: And so those were, I
8 assume, relatively short reroutes where, like, not very
9 far away on either side of the residence, you just had
10 to bow it a little bit? I assume none of them were
11 originally planned to be right up next to the house.

12 THE WITNESS: Yeah. And, Commissioner, Erik
13 Schovanec, I believe, will testify later, will have the
14 details on all of those. But it's my understanding that
15 the reroutes were minor reroutes, to your point, and
16 they were on the same parcel of property, it's just
17 moving beyond that 500 feet.

18 COMMISSIONER CHRISTMANN: Okay. And then I have
19 another question on maps. Is Erik the guy to go through
20 on -- and this has to do with aboveground pump
21 structures and things like that. Is that --

22 THE WITNESS: Erik is the guy.

23 COMMISSIONER CHRISTMANN: And when you calculate
24 these and say that -- let's say one of these that you
25 altered, before it was within 500 feet and now it's more

1 than 500 feet. From what? The outside wall of the
2 house? How do you measure that?

3 THE WITNESS: It's my understanding it's to the
4 nearest point of the structure to the pipeline, my
5 understanding. And Erik can either confirm or disagree.

6 COMMISSIONER CHRISTMANN: Okay. So Erik should
7 get ready for that because I'm going to want to know
8 whether we're counting the garage --

9 THE WITNESS: I hate to keep deferring,
10 Commissioner Christmann, but he's -- yeah, he's the --

11 COMMISSIONER CHRISTMANN: That's just fine.

12 THE WITNESS: -- greater level of expertise
13 around that than I do.

14 COMMISSIONER CHRISTMANN: I've got a question on
15 page 54 about whether a noise study was done. This
16 indicates that noise is not a problem. And then this
17 morning along the way -- or I have my note, Exhibit 28.
18 I don't remember where that came from. It says that a
19 noise study was done. Do we have that noise study?

20 MR. BENDER: I believe that's been now supplied
21 to the Commission at this point.

22 THE WITNESS: Erik is going to be a busy young
23 man. He can speak to that. Generally -- there has been
24 a noise study done. The building where these -- these
25 pumps and motors will be housed is insulated. It's a

1 metal structure. It's insulated. They've done noise
2 studies and, I believe, and I may misspeak, but Erik can
3 correct me, the nearest residence is a mile or so. And
4 so the study indicates that the decibel level of any
5 noise produced by that equipment would not impact the
6 nearest residence, but Erik can confirm in more detail.

7 COMMISSIONER CHRISTMANN: Well, I don't know,
8 Erik, if you're sitting in the room, you better warm up
9 because I'm going to want to know the decibels, not the
10 distance.

11 THE WITNESS: Yeah. Well, we know the
12 acceptable level is 90, right, if I remember correctly.

13 COMMISSIONER CHRISTMANN: On the bottom of page
14 59, it talks about permits and road crossings. Are
15 those all complete? Or I think you mentioned that
16 earlier, that those are in the process; right?

17 THE WITNESS: Yeah. Those are in process. And
18 what's -- what's been a challenge so far in North Dakota
19 is just townships. It's just making sure we can -- and
20 not a challenge from -- from securing the permits. A
21 challenge of finding the stakeholders. It's my
22 understanding that some aren't necessarily in their
23 offices. So, again, that -- we're diligently working on
24 that and we'll make sure that eventually we make contact
25 and go through that process. But that's -- in generally

1 is in process, road crossing, conditional use, etcetera.

2 COMMISSIONER CHRISTMANN: You realize that
3 before any potential approval order from this Commission
4 would be granted or at least before it would become
5 effective, those are going to need to be in place?

6 THE WITNESS: I do.

7 COMMISSIONER CHRISTMANN: I think you answered
8 this this morning, but I had it in my head so I wanted
9 to make sure. My experience from before this life was
10 up in the Dakota Gasification area. And I believe at
11 least initially, and I believe to this day, that that
12 CO2 has sulfur dioxide. Is that what you said this
13 morning?

14 THE WITNESS: I was speaking about the Denbury
15 CO2 and Satartia, but I believe it also -- maybe I said
16 that too. Excuse me. But I believe what I've read,
17 that it's used for enhanced oil recovery and it does
18 have some trace amount of hydrogen sulfide.

19 COMMISSIONER CHRISTMANN: This does not;
20 correct?

21 THE WITNESS: Our CO2 does not. We've done
22 stack tests at all facilities and it does not.

23 COMMISSIONER CHRISTMANN: Okay.

24 THE WITNESS: Generally, two impurities,
25 nitrogen and oxygen, in addition to, obviously, the CO2.

1 COMMISSIONER CHRISTMANN: The filing we received
2 from the Department of Environmental Quality on
3 February 21st -- well, I guess they sent it
4 February 8th, talks about guidelines to minimize
5 degradation of waterways. Is it your intention to
6 follow the guidelines from DEQ on degradation of
7 waterways?

8 THE WITNESS: Yes.

9 COMMISSIONER CHRISTMANN: And do you have the
10 temporary water discharge permits yet?

11 THE WITNESS: No, we do not, not --

12 COMMISSIONER CHRISTMANN: That's in process?

13 THE WITNESS: -- to my knowledge.

14 COMMISSIONER CHRISTMANN: And this was discussed
15 earlier but I didn't really understand what the end
16 result was on these landslide areas. I understood you
17 to say that you appreciated the Mineral Resources
18 Department's guidance on where these landslide areas
19 were and that they're being reviewed. Did I understand
20 that right? Or are you needing to make any adjustments
21 regarding that?

22 THE WITNESS: They're under review right now.
23 And Jon Schmidt, who may speak later, is more of an
24 expert in that area than I am, Commissioner, but, yes,
25 we appreciate the information and that's being evaluated

1 now. My recollection is maybe 17 of those sites, and I
2 think six of them are in the sequestration location, but
3 we're evaluating all of that information.

4 COMMISSIONER CHRISTMANN: Before lunch, in
5 cross-examination, you mentioned issues with where to
6 cross the Missouri River. Could you talk a little bit
7 about, if you were to go further east or north -- well,
8 I guess regarding the Missouri River I'm talking about
9 north.

10 THE WITNESS: North.

11 COMMISSIONER CHRISTMANN: What issues would be
12 involved if you went a mile north or five miles north
13 or ten mile -- what kind of issues are there?

14 THE WITNESS: There are -- there are cultural
15 restrictions, I mean significant cultural restrictions,
16 on both sides of the river. And so if we had the
17 ability to look at a map now, you know, we've got all of
18 those identified in our GIS routing tool, and it's polka
19 dots, if you will, and we're trying to saw-tooth the
20 pipe through these areas where we can get from one
21 parcel of land to the next and it's -- there's not a lot
22 of options.

23 And we've -- and I don't know the exact area,
24 and Erik may, but we've -- we surveyed several miles
25 north to south on both sides of the river, trying to

1 make sure, especially with the State Historical
2 Preservation Office, trying to make sure that we've --
3 we've looked at all alternatives, all of our options.
4 And we feel that where we're crossing now is one of the
5 very few.

6 And we've secured -- not that it matters to the
7 Commission, but we've secured rights of way easements on
8 both sides of the river and predominantly most of the
9 right of way on the west side of the river to the
10 sequestration location.

11 COMMISSIONER CHRISTMANN: And so the areas where
12 you would be starting your bore underneath the river and
13 ending it on the west side, those are not some of the
14 areas where you have thus far not gotten easement
15 acquisition, those areas you have gotten deals?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER CHRISTMANN: And how deep under the
18 river is that?

19 THE WITNESS: Again, you can tell I'm not much
20 of an expert, Commissioner. Erik can tell you exactly,
21 but it's -- it's several feet below the mud line. Erik
22 can give you a better indication of the exact depth. I
23 haven't personally seen the profiles lately but he has.

24 COMMISSIONER CHRISTMANN: Okay. I want to just
25 -- a couple questions about the control center in Iowa.

1 THE WITNESS: Sure.

2 COMMISSIONER CHRISTMANN: Is this an existing
3 control center that Summit would be contracting onto to
4 take on an additional pipeline to watch or are you
5 creating a new control center?

6 THE WITNESS: It's a new control center,
7 Commissioner, because we're a new business. It's our --
8 the first. We don't have existing pipelines in
9 operation. But we are in the office building where the
10 control center will be located, and we're working with
11 the current building owner to modify the building
12 accordingly.

13 I think I mentioned earlier that we've got our
14 control manager -- control room manager has been on
15 board for several months. They've developed a
16 simulator. They've developed SCADA screens. And he
17 actually has experience operating CO2 pipelines. And
18 that's well above what you asked.

19 COMMISSIONER CHRISTMANN: Okay. And you talked
20 about block valves this morning, and I think you said
21 there's 28 in North Dakota.

22 THE WITNESS: If I remember correctly.

23 COMMISSIONER CHRISTMANN: And in your testimony,
24 at one point you said a different number than what shows
25 up here of miles in North Dakota. The application says

1 320, and you said like 330 or something. At that point
2 were you counting the sequestration field?

3 THE WITNESS: Yes. And I apologize. I do that
4 on the right of way acquisition statistics as well.
5 That's correct.

6 COMMISSIONER CHRISTMANN: Okay. So you've got
7 about 28 block valves. And in that discussion earlier
8 this morning -- well, first let me ask you this
9 question. I think I understood you right, that PHMSA
10 requires them at least every 20 miles?

11 THE WITNESS: Yes.

12 COMMISSIONER CHRISTMANN: Okay. So that was the
13 discussion. But you actually have one about every maybe
14 -- whatever that math comes to, 11 miles, if they were
15 spread evenly; correct?

16 THE WITNESS: Yes. We have -- on the Missouri
17 River, for instance, we'll have a block valve on either
18 side of the river so that's -- that's well within a
19 20-mile spacing or a 15-mile spacing so that accounts
20 for some of the additional quantity of valves.

21 COMMISSIONER CHRISTMANN: So besides waterways,
22 do they get closer together as the pipeline gets larger
23 too and that -- would I assume that the ones that are
24 pretty distant, maybe closer to the 20 miles, are where
25 the pipe is smaller, or doesn't that have --

1 THE WITNESS: It doesn't really impact it. We
2 do have valves in closer proximity to high consequence
3 areas in North Dakota, but then generally, regardless of
4 the diameter of the pipeline, the spacing isn't impacted
5 unless it's, you know, dictated -- you know, we done an
6 emergency flow restriction device study which generally
7 guides us around the spacing of valves, and so that
8 would have been another source of data as to where we
9 locate the valves physically.

10 COMMISSIONER CHRISTMANN: Okay. The discussion
11 this morning about the potential new rules from PHMSA,
12 if this project were certified and built before they
13 issue new rules and they issue new rules and whatever
14 they would come up with, you know, more block valves or
15 -- would it be your intention to upgrade to meet the new
16 standards, or is it your intention to be grandfathered
17 in if you get certification on time and construction on
18 time?

19 THE WITNESS: I -- I think it would --
20 generally, that would be grandfathered in because, as I
21 stated this morning, I think the PHMSA regulations
22 around dense phase CO2 are adequate. But if the -- any
23 changes that were made were manageable and it improves
24 the operation or some other aspect of the project, we
25 would consider that.

1 COMMISSIONER CHRISTMANN: Okay. Then did you
2 give a number this morning -- I'm sure you did, but I'm
3 not finding it here -- on your -- on your acquisitions,
4 your easement acquisitions, a statistic?

5 THE WITNESS: Yes. And when I give you these
6 numbers, these are in total. So Mr. Rorie, who will
7 testify later, can give you exact numbers.

8 COMMISSIONER CHRISTMANN: Okay. Then I don't
9 need them. If he's coming with the -- because it's the
10 exact numbers that I'm wanting.

11 THE WITNESS: Okay. Because -- yeah.

12 COMMISSIONER CHRISTMANN: Just so he has a
13 little bit of time to prepare, whether --

14 THE WITNESS: He's been paying attention.

15 COMMISSIONER CHRISTMANN: I'm wanting for all of
16 North Dakota. I'm wanting it by county.

17 THE WITNESS: Okay.

18 COMMISSIONER CHRISTMANN: I'm wanting those
19 percentages by tracts.

20 THE WITNESS: Okay.

21 COMMISSIONER CHRISTMANN: And by linear feet or
22 linear miles or however.

23 THE WITNESS: Yeah. That's -- that's readily
24 available to him right now.

25 COMMISSIONER CHRISTMANN: Okay. And then staff

1 is probably shocked right now because I haven't asked
2 this question yet because it's the one that drives me
3 bananas every pipeline hearing. I never fail with this
4 one.

5 What about a weed management plan? Unless I
6 missed it here, I did not see it in here. And do you
7 have a weed management plan and are you getting them
8 approved by these ten county weed boards, at least in
9 whichever counties have their own weed boards?

10 THE WITNESS: Well, I've been doing this a lot
11 with you so I apologize, but Mr. Rorie is very familiar
12 with that and he can give you all the details around the
13 weed management plan and any interaction to this point
14 with various counties.

15 COMMISSIONER CHRISTMANN: I'm glad we saved
16 something for him.

17 THE WITNESS: He's got plenty.

18 COMMISSIONER CHRISTMANN: I have no other
19 questions, Your Honor.

20 THE WITNESS: And he's very sensitive about this
21 as well because he's worried about -- it's always, you
22 know, the issue with contractors and making sure they
23 adhere to the weed management plan.

24 COMMISSIONER CHRISTMANN: I'm glad it's not just
25 me.

1 MR. BENDER: Your Honor, I always instruct my
2 clients not to answer that question or ask -- have that
3 question come up so it's your own question.

4 (Laughter)

5 ALJ HOGAN: Don't want to steal his thunder,
6 yeah.

7 UNIDENTIFIED SPEAKER: Purposely don't ask that
8 question either.

9 ALJ HOGAN: All right. Thank you.
10 Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: For the record,
12 when I'm chair, I'm going to ask that question first.

13 Thank you so much for your time.

14 THE WITNESS: You're welcome.

15 COMMISSIONER HAUGEN-HOFFART: I'm going to go
16 back to the beginning just so I'm clear. You are the
17 chief operations officer for this position -- for this
18 company?

19 THE WITNESS: Yes, ma'am.

20 COMMISSIONER HAUGEN-HOFFART: And you -- tell me
21 directly about your CO2 experience.

22 THE WITNESS: So I don't have any direct CO2
23 experience.

24 COMMISSIONER HAUGEN-HOFFART: Okay.

25 THE WITNESS: I've got a significant amount of

1 pipeline design, construction, and operation experience,
2 but not specifically CO2.

3 COMMISSIONER HAUGEN-HOFFART: Okay. Looking at
4 your senior management, how would you describe their
5 experience with working with CO2 pipelines?

6 THE WITNESS: So excuse the clarification.
7 Senior management at the executive team level or my
8 senior management?

9 COMMISSIONER HAUGEN-HOFFART: How about when you
10 submitted the application, when you identified the
11 people in the application, how would you identify it
12 there?

13 THE WITNESS: I can put it simply. The only
14 individual that has direct experience with CO2 in our
15 organization is our control center manager, our control
16 room manager.

17 COMMISSIONER HAUGEN-HOFFART: And how many years
18 of experience?

19 THE WITNESS: He has five years of experience
20 operating pipelines in New Mexico, Texas, and Colorado,
21 CO2 pipelines. He's got 20 years of experience
22 generally but five with -- directly with CO2.

23 COMMISSIONER HAUGEN-HOFFART: Okay. So overall,
24 in a summary with some of the senior management, we have
25 five years of experience?

1 THE WITNESS: Correct.

2 COMMISSIONER HAUGEN-HOFFART: Okay. When you
3 started working on this project in Burleigh County, did
4 you reach out to anyone like the mayor, the city
5 engineer, anyone, on this plan, this route?

6 THE WITNESS: Well --

7 COMMISSIONER HAUGEN-HOFFART: Not going to the
8 commissioners, I mean the commission meetings and all
9 that, but just reach out individually with them before
10 identifying the route?

11 THE WITNESS: So I -- I joined the project in
12 June of '21. It wasn't later -- probably late '21 or
13 early '22 when we started reaching out to county
14 engineers about road crossing requirements, conditional
15 use permits, and those types of things. And then as I
16 mentioned earlier, our emergency response manager
17 started reaching out to first responders, etcetera. And
18 it wasn't until after that, that communication with
19 counties and those types of entities took place.

20 COMMISSIONER HAUGEN-HOFFART: So the route was
21 identified and then reach-out was done?

22 THE WITNESS: The preliminary route, yes, so
23 that way we'd have some basis to talk from.

24 COMMISSIONER HAUGEN-HOFFART: Yeah. Would you
25 see any benefit of reaching out prior to get some

1 information, some concerns, where potential growth might
2 be in a community, just additional information? Do you
3 think it might have helped some of this concern that's
4 going on?

5 THE WITNESS: Well, I think -- at least
6 typically my approach is we've got a -- we've got a
7 program that has, as I mentioned earlier, every bit of
8 publicly available information and then some information
9 that we purchase that includes some of the things that I
10 mentioned a few times. So we preliminary route the
11 pipeline. That way we've got something on paper,
12 something on maps. Then we start having conversations
13 with landowners and stakeholders. Then we get their
14 input. And then we make adjustments as we can at that
15 point.

16 I mean, to answer your question, I'm not sure it
17 would have made a difference early, but it's my
18 experience that once you've got something on paper,
19 people can look at it and they can see where it is
20 located, close proximity to a residence or to a
21 community or to a city. Then it's a more meaningful
22 conversation.

23 COMMISSIONER HAUGEN-HOFFART: Okay. I want to
24 go -- when you were talking about the valves, the ones
25 above ground and were, like, 20 miles apart. Let's say

1 the leak is there on one of the valves. Okay. No one
2 is going to go there. And you said your staff are kind
3 of like the first responders to that, they're going to
4 handle it. Well, they're not going to go to that valve
5 and shut it off because that's where the leak is so
6 they're going to have to go 20 miles down; correct?

7 THE WITNESS: Well, the valve can be shut
8 remotely from the control center so no one has to
9 physically go and shut the valve.

10 COMMISSIONER HAUGEN-HOFFART: But that control
11 center is in Iowa.

12 THE WITNESS: That's true.

13 COMMISSIONER HAUGEN-HOFFART: Okay. So then
14 tell me, pick a spot in Burleigh County, one of the
15 valves. Tell me what the time period is going to be for
16 that valve to be shut down where that leak is if the
17 control center is in Iowa.

18 THE WITNESS: See, they're all controlled
19 remotely. And so they can shut down any valve along the
20 system, and there are 290 or so valves in the whole
21 system. And those valves can be cycled shut in seconds.
22 But on average, when we're modeling it, it's -- we allow
23 two minutes for it to shut. And we have to take into
24 consideration hydraulic factors. So if you slam a valve
25 shut, that can create a water hammer effect and could

1 create more damage, if you will. And so we use two
2 minutes as kind of a guideline as how long it would take
3 to shut a valve.

4 COMMISSIONER HAUGEN-HOFFART: So how many --
5 hypothetically, give me an estimate, from Iowa to a
6 point in Burleigh County, how long would that be while
7 that valve is still leaking?

8 THE WITNESS: Again, it's two minutes when the
9 -- before the --

10 COMMISSIONER HAUGEN-HOFFART: Two minutes?

11 THE WITNESS: Yes.

12 COMMISSIONER HAUGEN-HOFFART: I'm sorry if I
13 misunderstood.

14 THE WITNESS: Well, I probably didn't explain it
15 well. But we can shut -- I can shut down any valve on
16 the system at any time, and generally it's about a
17 two-minute interval for that closure.

18 COMMISSIONER HAUGEN-HOFFART: You have things
19 flowing at a constant. Doesn't it have to be shut down
20 sequential? No?

21 THE WITNESS: No. But that's what I mentioned
22 about the hydraulic concern, is that if you shut a valve
23 instantaneously, then you've got all that fluid, that
24 super critical dense phase CO₂, or whatever commodity it
25 would be, in this case CO₂, that's flowing down the

1 pipeline. So that's going to shut that flow and you'll
2 have that reverberation back. So you have to take that
3 into consideration.

4 But I will tell you where -- the intent is
5 always to close it just as quickly as possible without
6 making a situation worse, and sometimes that's a
7 judgment call.

8 COMMISSIONER HAUGEN-HOFFART: What impact does
9 it have on that valve that's leaking, though, as it's
10 being shut down? Is it greater dispersement of it or
11 what happens where that valve is leaking?

12 THE WITNESS: Well, I'm speculating,
13 Commissioner, but if it's a valve leak, it's likely
14 either from the flange connection -- because they're all
15 above ground. There are no below-ground valves. So
16 they're bolted flange connections, not welded. So the
17 leak's actually probably from the bonnet or the packing
18 of that valve or it's from the flange connection. And
19 that release would be minimal, very minimal, compared to
20 a breach in the line or a puncture in the line.

21 COMMISSIONER HAUGEN-HOFFART: Okay. I'm going
22 to go to the application. Well, I think you already --
23 I'm on page 44. I think you answered this so I'm just
24 going to -- where you state in 7.3, the project route
25 was designed to be straight and you -- you explain that,

1 and you explained it. I was concerned that it had to do
2 all with cost, and I believe you answered "no" to that
3 question.

4 THE WITNESS: Yes, ma'am. I mean, in my
5 experience, I've been fortunate enough to work on a lot
6 of pipeline projects, and you always want to go from A
7 to B, and that's shorter construction duration, less
8 impact to landowners, and it's less costly, to be quite
9 honest.

10 But we're owned by an agricultural company and
11 they were very concerned about how we treat landowners.
12 And so it was somewhat of a nuance for me to approach a
13 landowner if they said "I don't like you crossing my --
14 my property diagonal, I want you to run my fence line,"
15 and unless there's some other constraint, we accommodate
16 that.

17 That's -- to be quite frank, is not -- not the
18 way -- it's not my previous experience. And so we've --
19 we've modified the route a lot. And so that's -- you'll
20 see there's been a lot of changes. Not huge changes
21 but, again, I mentioned earlier, a number of changes,
22 over 3,000, but most of those are very minor and it's
23 typically on an individual's property or an adjacent
24 property.

25 COMMISSIONER HAUGEN-HOFFART: Okay. I'm going

1 to go back, page 42. We talked a lot about emergency
2 management planning. At the -- right before break, and
3 it could be maybe how I just perceived it, but we were
4 talking about emergency management and authorization of
5 this, and you kind of put it back on us to do it, I mean
6 to oversee it, with the adverse effects, the decision's
7 on us. I think it's on the company to show that this
8 project does not have adverse effects on the environment
9 and to the people. And a lot of that has to do with
10 training. And you said you're willing to work with
11 emergency management and first responders, you're
12 willing to do the training. Is that just upfront or is
13 that ongoing or how often?

14 THE WITNESS: And if I -- if I came across as
15 trying to put a responsibility back on the
16 commissioners, that wasn't intended.

17 We are responsible for any type of emergency
18 planning, emergency response associated with a release
19 from our pipeline, but we need to work with the local
20 resources that are available and augment those, whether
21 personnel or equipment, to the extent we need to, to
22 make sure that we're satisfying the need for -- or the
23 potential need for our project. But, yes, training is a
24 requirement and we'll do it before we go in operation,
25 and then on an annual basis we'll provide additional

1 training.

2 In my experience and with the individual I have
3 running the emergency response, he and I have worked
4 together many times on other projects, he likes to
5 actually have -- simulate drills and situations, not
6 just take doughnuts to the emergency response or the
7 first responder. They like to do a real planning
8 session. If we have a third-party hit at this point in
9 the line and this much CO2 is released, how are we going
10 to deal with this? And they walk through very
11 meticulously, step by step, what would happen, who would
12 be involved, what resources are required. And then that
13 way you're continually refreshing, not only for us and
14 our personnel but for the first responders.

15 COMMISSIONER HAUGEN-HOFFART: Do you have a time
16 limit as far as your company response to a leak or an
17 incident? I know you said you're determining how many
18 employees you'll have in Burleigh, and I'm sure you're
19 doing that in South Dakota, whatever. But on an
20 anticipated incident, what is your response time?
21 Because coming from Iowa, it's going to take some time.
22 So how are you guys going to be the initial first
23 responders to an incident?

24 THE WITNESS: Well, we'll have personnel in
25 North Dakota so we'll have what we feel are adequate

1 personnel in North Dakota to manage the 320 miles of
2 pipeline and the facilities. So initially it's one pump
3 station. Ultimately it may be four pump stations and
4 the sequestration site. So we'll have adequate
5 personnel to manage that operation and they will largely
6 all be trained on emergency response. And then we'll
7 have dedicated personnel to damage prevention.

8 So it would be -- and I don't want this to be
9 intended to be a flippant answer, but will -- it will be
10 who's in the area. And it will all be -- the initial
11 response will be all North Dakota personnel.

12 Now, if the incident is such that we need to
13 bring people in from outside, obviously we'll do that.
14 And we'll partner with other agencies like an OSRA.
15 That's oil response -- oil spill response. So this is
16 not that similar, but there's other people. So we don't
17 need spill boom and those kinds of things, obviously,
18 but we will have relationships with other outside third
19 parties that could support us and first responders if we
20 need to.

21 COMMISSIONER HAUGEN-HOFFART: Okay. So do you
22 break down incidents like between like an incident
23 versus catastrophic and then identify needed personnel
24 on the amount needed and who's to respond?

25 THE WITNESS: We will. And that will be part of

1 that training. So it's -- and we always start with the
2 most conservative and work backwards. So we've had a
3 lot of discussion here this morning about a guillotine
4 failure. That's the starting point and then you'll work
5 back to a less severe incident.

6 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.
7 That concludes my questions.

8 ALJ HOGAN: All right. Thank you.

9 Mr. Dawson.

10 SUBSTITUTE DECISIONMAKER DAWSON: Mr. Powell,
11 the Summit business structure, do I understand it
12 correctly that it's Summit Ag owns Summit who's building
13 this, and then a separate group, Summit, will operate
14 it?

15 THE WITNESS: Yes, Mr. Dawson. So it's --
16 Summit Agriculture is our parent company. Summit Carbon
17 Solutions is the business. And within Summit Carbon
18 Solutions there's three entities. So there's Summit
19 Capture, Summit Transport, which is the pipeline piece,
20 and then Summit Sequestration.

21 SUBSTITUTE DECISIONMAKER DAWSON: Is Summit
22 Agriculture publicly traded or is that --

23 THE WITNESS: They're privately held.

24 SUBSTITUTE DECISIONMAKER DAWSON: Okay. We had
25 a lot of talk about these main line block valves and you

1 said they were in -- the term you used I cannot
2 remember, but high impact areas?

3 THE WITNESS: High -- well, they're along the
4 pipeline, as Commissioner Christmann said, maximum
5 spacing every 20 miles, but there are closer spacings
6 within these high consequence areas.

7 SUBSTITUTE DECISIONMAKER DAWSON: And high
8 consequence areas, you've explained one of them would be
9 on one side of the Missouri River and the other side of
10 the Missouri River; correct?

11 THE WITNESS: Correct.

12 SUBSTITUTE DECISIONMAKER DAWSON: What other
13 high consequence areas?

14 THE WITNESS: I may misspeak, Mr. Dawson, but I
15 believe there are two in North Dakota, and those are
16 typically either higher population areas and so those
17 are -- in those areas, we want to minimize -- minimize
18 the impact if -- of a release and so we space the valves
19 closer so if you shut those valves, you isolate the
20 segment that may be damaged and there's less volume to
21 be released.

22 SUBSTITUTE DECISIONMAKER DAWSON: You said
23 there's two high population areas in North Dakota?

24 THE WITNESS: Two high consequence areas. And
25 we'll have to confirm that.

1 SUBSTITUTE DECISIONMAKER DAWSON: Oh, okay. But
2 based on population, how many high consequence areas are
3 there?

4 THE WITNESS: Again, I think it's two, but let
5 me confirm, please.

6 SUBSTITUTE DECISIONMAKER DAWSON: I just want to
7 understand you.

8 I'm going to get into science a little bit here,
9 and I'm attracted to it but am poor at it so I -- it's
10 very dangerous for me to do this, but we're talking
11 about super critical dense phase carbon dioxide. That's
12 a lot of words to modify carbon dioxide. And I'm
13 getting that it's compressed and it's liquid, but do
14 those words add anything else besides compressed liquid
15 carbon dioxide?

16 THE WITNESS: No. I'm a picture guy,
17 Mr. Dawson. If you looked at a phase diagram of CO₂, it
18 would be gas or vapor. And that's dense super critical.
19 And all that means is it's -- it's above a certain
20 temperature and above a certain pressure, it's
21 compressed into more of a liquid phase. And then if
22 that pressure reduces, then it moves into a vapor phase.

23 SUBSTITUTE DECISIONMAKER DAWSON: And so in the
24 pipeline it's at what temperature?

25 THE WITNESS: The temperature variation, at

1 least in -- in the pipeline will be in that -- I believe
2 in the -- in the application it's 23 degrees to 120.

3 Typically what happens when it's discharged from
4 the capture facilities, depending on the facility and
5 how big it is and how much compression, how much volume,
6 how much compression, how many stages it has to go
7 through, it heats up to a maximum of 120 degrees. So
8 when it's discharged, it will be at 120 degrees, worst
9 case. And then as it goes through the pipeline and goes
10 below ground, it quickly stabilizes. And that -- more
11 information than you asked for, but that comes into play
12 in the fracture control plan and the analysis we did,
13 temperature is a factor in that.

14 SUBSTITUTE DECISIONMAKER DAWSON: What is the
15 effect of if I had a small pipe of dense phase carbon
16 dioxide and I released it into water? Would it freeze
17 the water? Would it turn it into something else? Would
18 it create carbonated water? What would happen?

19 THE WITNESS: And Mr. Schmidt, who will testify
20 later, is an expert in this field. But in my
21 understanding, depending on the volume, it -- it may
22 create carbonic acid when it interfaces with the water,
23 but the studies that I've read, it -- again, depending
24 on the volume, it will create turbulence. The fish and
25 the living organisms that can move will move away from

1 it. The stationary, like mollusk, are fixed but there's
2 minimal impact. And, again, I say minimal impact, the
3 studies I read. I'm sure that's directly correlated to
4 how much CO2 is released into the water column.

5 SUBSTITUTE DECISIONMAKER DAWSON: One last
6 question. So when you construct the pipeline, if you go
7 through trees, you'll cut them all down to the width of
8 your construction easement, I take it?

9 THE WITNESS: Well, trees are a scarce commodity
10 in North Dakota as you know better than I do.

11 SUBSTITUTE DECISIONMAKER DAWSON: Trees are --
12 you know, as weeds are to Commissioner Christmann, trees
13 are to me.

14 THE WITNESS: So we try to avoid that. And Mr.
15 Schovanec can speak more specifically to where we would
16 intend to clear. I know it's minimal areas. There are
17 areas that we're drilling below those areas, but there
18 may be some clearing. He can specifically address what
19 that looks like and -- and if you want to talk lineal
20 mileage, etcetera, but --

21 SUBSTITUTE DECISIONMAKER DAWSON: I mainly asked
22 the question for the follow-up question. Then they'll
23 remain treeless forever, I mean as long as the pipe --
24 so you can view the pipeline?

25 THE WITNESS: Yes. And we don't -- we would

1 prefer that if someone didn't plant trees on that
2 50-foot permanent right of way. I'm not saying that
3 would never happen. I'd rather you not plant the tree
4 right over the pipeline. Only because if we had to come
5 in, you know, if there's a -- if there's an issue for
6 maintenance or an emergency and we have to come in, I'd
7 hate to have to cut down the new tree. If they're
8 planting them on the edge of the right of way, I'm not
9 saying that that wouldn't be acceptable.

10 SUBSTITUTE DECISIONMAKER DAWSON: Okay. I have
11 no further questions.

12 ALJ HOGAN: Okay. Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: I would stand
14 corrected if I don't have the detail right, but with the
15 oil and gas pipelines that we have sited, a lot of --
16 many of them have an inspection requirement where they
17 fly or some other way visually inspect. I think it's 26
18 times per year and no more than three weeks apart. Does
19 the CO2 pipeline have that same requirement or is it
20 something different or not at all?

21 THE WITNESS: No. It's the same exact
22 requirement. Aerial surveillance. Yes.

23 COMMISSIONER CHRISTMANN: Is that right, it's 26
24 times a year and no more than three weeks apart?

25 THE WITNESS: You're spot on.

1 COMMISSIONER CHRISTMANN: Thank you.

2 ALJ HOGAN: All right. Mr. Bender, any
3 redirect?

4 MR. BENDER: No, I don't have any redirect.

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

6 MR. PELHAM: I have a few questions.

7 RE CROSS EXAMINATION

8 BY MR. PELHAM:

9 Q. Mr. Powell, you were asked by Commissioner
10 Christmann about -- I believe it was Commissioner
11 Christmann, it may have been someone else, but you were
12 asked as far as crossing the Missouri River and issues,
13 and I believe you testified that there were not a lot of
14 options and that it is one of very few crossing areas.
15 I'm wondering if you can tell me what the other few
16 crossing areas are?

17 A. Mr. Pelham, I can't tell you off the top of my
18 head, but graphically we could -- we could show you the
19 options that we looked at, if that's satisfactory.

20 Q. Well, I understand that there are other options
21 and -- and the questioning here was, you know, as to
22 what the options are. And if there are -- if there are
23 a few, very few, then to me "a very few" means there are
24 some others. So I'm interested in learning what the
25 others are. And, you know, if there's another witness

1 here that can testify to that, then I think that would
2 be appropriate, but I believe your testimony was, is
3 that there are not a lot of options rather than there
4 are no -- no other options. So I think that there's a
5 difference.

6 So I'm just wondering, are there no other
7 options or are there options?

8 A. Mr. Pelham, I'll have to defer to Erik Schovanec
9 who is --

10 Q. Sure.

11 A. -- better versed on the routing than myself.

12 Q. Fair enough.

13 And the questions on the block valves and the
14 distances between block valves, would it be possible or
15 -- in other projects, in your experience, to increase
16 the amount of frequency of block valves in higher
17 populated areas?

18 A. Yes.

19 Q. Is that something that the company has looked at
20 in this instance?

21 A. We have. As I mentioned, we did an emergency
22 flow restriction device study, and that typically
23 informs where you put those valves.

24 Q. So walk me through. And I think I understand
25 this. So the valves -- say, for example, there's an

1 event and there's a realization in Iowa as to, you know,
2 a leak of the line and then the valves are -- the
3 relevant valves are shut off between the leak and -- the
4 closest valves between the leak; correct? That's where
5 they're shut off, nowhere else?

6 A. You shut off -- well, depending on the
7 situation, you shut off the valves on either side of the
8 release point, but depending on your delivery points --
9 if the leak's in North Dakota, you're essentially
10 shutting down the pipeline system because there's one
11 delivery point. If your leak's in eastern Iowa, or the
12 eastern side of the system in Iowa, in theory you could
13 operate the rest of the system.

14 Q. Okay. So assume then for purposes of a
15 hypothetical, and it's a hypothetical, and if you can't
16 answer because it's speculative then you can say so, but
17 in terms of a hypothetical release event, the valves
18 between are executed, they're closed, that area of the
19 line is pressurized at a point but at some point doesn't
20 it become equalized in the pressure?

21 A. You're correct. So as the product releases from
22 the pipeline, the pressure stabilizes and that will
23 eventually stop the release of the -- of the vapor
24 released. Significantly diminish it.

25 Q. So in the study that's being done, apparently in

1 the study that's being done, will there be a volume
2 amount in a worst case scenario that will be made known
3 as to between valves and (indiscernible) event?

4 A. That -- that volume is known.

5 Q. Is known?

6 A. Yes, sir.

7 Q. Okay. And --

8 A. And, again, that's why I say, Mr. Pelham,
9 qualify it, we've looked at it at worst case --

10 Q. Sure.

11 A. -- of scenario, maximum capacity.

12 Q. The guillotine versus the --

13 A. In a full pipeline. Because if it's anything
14 less than the -- the release volume would be less. If
15 we're equipped to handle the worst case, we should be
16 able to handle a lesser case.

17 Q. So when you're asked questions about the plume
18 and coming out, that is -- that is developed through the
19 study and the amount of volume that would be released at
20 that point in a worst case scenario; is that correct?

21 A. That is correct.

22 Q. So is it your testimony then that the -- that
23 the worst case scenario releases can be calculated and
24 that those -- that data and that information will be
25 shared with the Commission?

1 A. Yes.

2 Q. Okay. Thank you, sir.

3 MR. PELHAM: I don't have any other questions.

4 ALJ HOGAN: Mr. Bakke, any additional questions?

5 MR. BAKKE: Yes, just a few.

6 RECROSS EXAMINATION

7 BY MR. BAKKE:

8 Q. I want to follow up on Mr. Pelham's questions
9 about other possible routes to cross the Missouri River.
10 You said you think there would be few other sites to the
11 north due to cultural restrictions. What cultural
12 restrictions are you referring to and where?

13 A. Well, Mr. Bakke, there are numerous, and these
14 are cultural features. And I think -- you may know that
15 we notified 62 Native American tribes when we started
16 this project, and we've been working with the tribes in
17 this area to participate in our cultural surveys and
18 help identify -- in addition to archaeologists -- to
19 help us to identify where these features are. And so in
20 the survey work that we've done, we've got all of those
21 features identified.

22 Q. What are they and where? That's what I'm
23 asking.

24 A. They're stone circles. They're anything that
25 may be material culturally, not only to the tribes that

1 are here today but the tribes that may have been
2 historically that may not physically live in the area
3 today.

4 Q. Okay. So where are they located specifically
5 further to the north of where this crossing is planned
6 by Summit?

7 A. Again, Mr. Bakke, there's --

8 MR. BENDER: Excuse me for a moment. We're
9 required to submit that to the SHPO but it's
10 confidential. I mean, he can answer those questions
11 generally, but it is submitted to the SHPO and it is
12 confidential. And the reason for that is landowners and
13 the SHPO doesn't want people -- this being identified
14 and then people going out and digging up the artifacts.

15 MR. BAKKE: And I'm not asking for a name of a
16 property owner. I'm just asking generally how many are
17 there and how extensive are they and -- I'm having
18 difficulty understanding how there can be so many
19 cultural restrictions that doesn't permit this crossing
20 further north.

21 MR. BENDER: And perhaps we are going to put on
22 a witness who's going to talk about the archaeology and
23 the other environmental issues. He might be able to
24 better respond. His name is Mr. Schmidt.

25 Q. (BY MR. BAKKE) So are you unable to answer my

1 questions, Mr. Powell?

2 A. Mr. Bakke, I said generally they're numerous.
3 Mr. Schmidt can provide more detail.

4 Q. Okay. Are you able to say anything more than
5 that, that generally you think there's some cultural
6 restrictions to the north that may limit the number of
7 crossings there?

8 A. Generally, I know there are cultural
9 restrictions.

10 Q. Okay. But you don't know where?

11 A. Again, Mr. Bakke, Mr. Schmidt would be better
12 positioned to --

13 Q. How far north did Summit look of Bismarck to try
14 to determine an appropriate or possible location to
15 cross the river?

16 A. Mr. Schovanec can provide more detail and the
17 extent of the survey work.

18 Q. Was it five miles? Was it ten miles? Was it
19 20 miles?

20 A. Mr. Schovanec can provide more detail.

21 Q. Okay. Did Summit look to see if there were
22 possible river crossings to the south of Bismarck,
23 Mandan that would not be subject to the prevailing winds
24 blowing from the north to the south?

25 A. We've -- we've evaluated other crossing

1 alternatives, yes.

2 Q. In the south as well?

3 A. We've evaluated other crossing alternatives.

4 Mr. Schovanec can give you more detail.

5 Q. Okay. Well, do you know whether the south of
6 Bismarck was looked at?

7 A. Mr. Schovanec can give you more detail.

8 Q. I'm just asking you what you know.

9 A. And I'm saying Mr. Schovanec can provide more
10 detail.

11 Q. Are you aware of any cultural restrictions to
12 the south of Bismarck to cross the river there?

13 A. Mr. Bakke, I'm not as familiar with all of the
14 cultural survey work along the 320 miles of pipeline in
15 North Dakota.

16 Q. Okay. Is there anything in the PSC application
17 or filings that identifies even in a general fashion
18 where these cultural restrictions are that limit the
19 locations that Summit could have a pipeline cross the
20 river?

21 A. Was that a question?

22 Q. Yes.

23 A. Could you repeat it, please?

24 Q. Yes. Is there anything in the application that
25 Summit submitted or other filing that was submitted by

1 Summit that would identify these locations where you're
2 saying there were cultural restrictions with any
3 precision?

4 A. As Mr. Bender said, I don't believe it's in the
5 application but that information is shared with the
6 State Historical Preservation Office.

7 Q. Okay. So is the PSC going to get it?

8 MR. BENDER: The answer is yes.

9 Q. Is the public going to get it?

10 A. I think --

11 MR. BENDER: Do you know?

12 A. No, I don't know, but I know that there are some
13 confidentiality with the tribes and the SHPO.

14 Q. I want to explore a little bit your answers on
15 questions about shutting down the pipeline. Let's
16 assume the pipeline's running. There's a leak in
17 Burleigh County. By that point, there will have been 32
18 ethanol plants that contributed CO2 into the pipeline,
19 the 24-inch pipeline; correct?

20 A. Potentially, yes.

21 Q. Well, that's the plan, isn't it?

22 A. Well, all these plants have plant maintenances
23 and outages, Mr. Bakke, so at any -- any given time
24 there may not be 32, but there could be.

25 Q. Okay. Well, under normal operating conditions,

1 you'd expect the 32 plants all to be contributing CO2
2 into the pipeline; correct?

3 A. Fair.

4 Q. Okay. And so the worst possible place to have a
5 leak would be in Burleigh County because, by then, you
6 would have 32 ethanol plants that are all contributing
7 CO2 and the valves, the shut-off valves, for each of
8 those facilities would have to properly shut off;
9 correct?

10 A. Well, no. When you shut a valve downstream,
11 then there are alarms on the discharge pumps at these
12 facilities and they would shut down as well. And that's
13 what the control center operation is responsible for.
14 They're managing the system upstream so that way you
15 don't have any additional issues with operating --
16 operation of the pipeline or any more -- any additional
17 damage to the pipeline system.

18 Q. Okay. Maybe I misunderstood or didn't hear your
19 answer correctly. I thought you told the commissioners
20 that in order to address any leak, you -- at least in
21 Burleigh County, you would have to shut down the entire
22 pipeline. Is that not what you said?

23 A. I said you would shut down the pipeline because
24 that's the nearest point to the terminus.

25 Q. Sure. And you would shut down --

1 A. You said -- your comment was we'd have to shut
2 each of those valves, and I'm telling you that's just an
3 automated process.

4 Q. Sure. And how many valves have to shut down to
5 stop these 32 ethanol plants from all quit -- from
6 contributing into the CO2 pipeline if there's a leak in
7 Burleigh County?

8 A. I mean, I -- your scenario is -- your what-ifs
9 is getting more and more speculative. But the valve
10 upstream of the release point hypothetically, that shuts
11 in everything upstream. So any valves that shut or
12 don't shut upstream of that will not impact the release.
13 It's the plants upstream.

14 Q. Well, when you say the release point, are you
15 talking about the ethanol plants' release point?

16 A. No. I'm talking about your hypothetical where
17 you would have -- the pipeline is damaged and there's a
18 CO2 release.

19 Q. Okay. So are you able to answer my question?
20 How many valves have to activate and shut down in the
21 event there's a leak in Burleigh County and all 32 are
22 -- ethanol plants are under operating normal conditions?

23 A. Two.

24 Q. Okay. And where are those?

25 A. Upstream and downstream of the release point.

1 Q. Well, I thought you told me that there was a
2 hammer effect.

3 A. There could be, yes.

4 Q. Sure. And the hammer effect, have you heard
5 that referred to as a chain reaction?

6 A. No.

7 Q. Okay. The hammer effect means that if you
8 shut --

9 A. I know what it means.

10 Q. -- upstream and downstream valves, you're still
11 going to have that high pressure liquid or CO2 coming to
12 the location where the valve is now shut off; correct?

13 A. And if you know that, then you know that each of
14 these capture facilities, the discharge pumps also
15 control on high discharge pressure. When that valve
16 shuts anywhere downstream on that system, that pressure
17 rises and those pumps shut down. That minimizes the
18 risk of this water hammer effect.

19 Q. But what can happen is if you don't shut off all
20 the valves all the way back to Ames, Iowa, you can have
21 this hammer effect which can cause further ruptures or
22 failures further downstream towards Ames, correct, or
23 upstream?

24 A. That's -- that -- that's a what-if hypothetical.
25 Anything could happen, I guess. In this situation, we

1 have very specific operating procedures and shut down
2 procedures, normal operation and abnormal operation.

3 Q. Sure. And a lot of time leaks happen because
4 it's not normal operating conditions; correct?

5 A. Predominantly they happen from third-party
6 strikes.

7 Q. And valves can fail?

8 A. Valves can fail.

9 Q. And they do fail?

10 A. And that's why we're required to inspect them at
11 least twice a year.

12 Q. Sure.

13 A. To mitigate that risk.

14 Q. But you agree the worst place for that leak to
15 occur with the 32 ethanol plants contributing would be
16 here in Burleigh County outside the metro area; correct?

17 A. Again, you're asking me to speculate about what
18 that release might entail.

19 Q. Well, let's assume there's two releases of CO2
20 that are equal: Same volume, same wind, same
21 conditions. Wouldn't it be much better for that release
22 to occur in a rural area, more remote area, than in a
23 metro area like north Burleigh County near where this
24 pipeline is proposed to be installed?

25 A. Again, that's why we perform this emergency flow

1 restriction device analysis and a dispersement analysis,
2 so we can see where it's critical to place valves to
3 mitigate that risk.

4 Q. And that wasn't my question.

5 A. But that is the response to your question.

6 Q. Wouldn't it be better for that type of
7 catastrophic event to happen in a more rural area where
8 there's not people or animals or structures around
9 versus in this location directly north of Bismarck in
10 the path of development?

11 A. I'm saying that's why the valve spacing is
12 closer in high risk areas than it is in rural or areas
13 that aren't as high risk.

14 Q. And I'm not asking about the valve spacing. Are
15 you able to answer my question? Isn't it worse if it
16 happens in this location, in the path of development in
17 Bismarck, versus a rural area? Yes or no?

18 A. You're asking me to speculate, Mr. Bakke. The
19 wind could be blowing to the north. You're asking me to
20 speculate about what a release might look like.

21 MR. BAKKE: I have no further questions.

22 ALJ HOGAN: Mr. Leibel, any other questions?
23 Can I have you grab the mic? Thank you.

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RECROSS EXAMINATION

BY MR. LEIBEL:

Q. So I'm going to follow up, just asking about this dispersement model again. So do I understand that Summit is willing to provide that model to the Commission? Is that accurate?

A. Well, it's how you define "model." What we're willing to do is provide the Commission with the methodology on how the model works, inputs, outputs, and the results of that model. PHMSA doesn't require -- and they're not the Commission, I understand that. PHMSA doesn't require the model but the output of the model.

Q. Okay. So who prepared that dispersement model?

A. Audubon Field Services prepared that model in concert with our subject matter experts within Summit.

Q. Okay. And they were paid by Summit to do so, I assume?

A. Correct.

Q. Is there anyone -- any outside -- person outside Summit or Summit's agent, the contractors, that have seen that?

A. Well, the service commission -- the Public Service Commission can see that, and then they can have their own staff or technical experts review that output, as PHMSA will.

1 Q. Okay. And my question, I guess, was, as we sit
2 here today, has anyone else seen it other than Summit or
3 Summit's people?

4 A. Yes.

5 Q. Who?

6 A. The technical staff for the Public Utility
7 Commission of South Dakota.

8 Q. Okay. And that hasn't been -- other than the
9 technical -- I'm sorry, could you say that again?

10 A. The technical staff for the Public Utility
11 Commission for the State of South Dakota.

12 Q. Okay. So other than --

13 A. I can't testify to who -- who -- what
14 consultants they've utilized confidentially to look at
15 the output.

16 Q. Okay. And my question is a little bit more
17 general. So other than the South Dakota PUC, no other
18 entity or person, to your knowledge, has reviewed
19 Summit's dispersement schedule?

20 A. Not other than Summit, Summit employees, and our
21 legal staff that's supporting this process.

22 MR. LEIBEL: Okay. That's all I have.

23 ALJ HOGAN: All right. Are there any other
24 questions from the commissioners or Mr. Dawson?

25 UNIDENTIFIED SPEAKER: No.

1 ALJ HOGAN: No? All right.

2 That's it, Mr. Powell.

3 THE WITNESS: Thank you for your time.

4 ALJ HOGAN: Just a couple questions for you
5 today.

6 Mr. Bender, do you want to call your next
7 witness?

8 MR. BENDER: Yes. The Applicant calls Brigham
9 McCown.

10 UNIDENTIFIED SPEAKER: What's his last name?

11 MR. BENDER: McCown. M-C capital C-O-W-N.

12 ALJ HOGAN: Good afternoon.

13 BRIGHAM MCCOWN: Good afternoon, Your Honor.

14 ALJ HOGAN: Is your microphone on? That sounds
15 better.

16 BRIGHAM MCCOWN: There we go.

17 ALJ HOGAN: I'll have you start by maybe stating
18 your first and last name and spelling both your first
19 and last name for the record.

20 BRIGHAM MCCOWN: Sure. I'm Brigham McCown.
21 That's B-R-I-G-H-A-M, M-C capital C-O-W-N.

22 ALJ HOGAN: All right. And were you in the room
23 earlier today when I went through the penalties for
24 perjury?

25 BRIGHAM MCCOWN: I've been in and out, but I did

1 hear the one for Mr. Powell, yes.

2 ALJ HOGAN: Okay. Great. And do you understand
3 what perjury is?

4 BRIGHAM MCCOWN: I do. I'm a lawyer.

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

8 BRIGHAM MCCOWN: I do to the best of my ability.

9 ALJ HOGAN: All right. Thank you.
10 Go ahead, Mr. Bender.

11 MR. BENDER: Thank you, Your Honor.

12 **BRIGHAM MCCOWN,**

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

15 DIRECT EXAMINATION

16 BY MR. BENDER:

17 Q. Mr. McCown, can you tell me by whom you're
18 employed?

19 A. So I have several employments. Nouveau
20 Consulting, which is based in Dallas, Texas, that
21 provides consulting services. I'm a professor of law
22 and policy at Miami University in Oxford, Ohio. And I'm
23 a senior fellow and director of the American Energy
24 Initiative at Hudson Institute, a think tank, in
25 Washington, DC.

1 Q. Can you briefly describe for us your educational
2 background and work experience?

3 A. Sure. I have a Bachelor of Arts in diplomacy
4 and foreign affairs. I have a Master's of Business
5 Administration from the College of William and Mary. I
6 have a Juris Doctor from the Salmon P. Chase College of
7 Law in northern Kentucky. And I have a certificate --
8 graduate certificate in emerging energy technologies and
9 innovation from Stanford.

10 Q. Okay. And work history?

11 A. Work history. Following college, I entered the
12 Navy as a naval officer and naval aviator, 10 years
13 active duty, 15 more years as a reserve officer, retired
14 from that. Went to law school; worked for various law
15 firms in and around the country. Have been a consultant
16 primarily in the transportation and infrastructure
17 fields. I previously mentioned think tank. I founded a
18 non-profit which I forgot to mention, Aii.org, which is
19 a bipartisan think tank for infrastructure innovation.

20 I served in the Federal Government under both
21 Democratic and Republican cabinet secretaries, first as
22 the general counsel of the Federal Motor Carrier Safety
23 Administration. That's the trucking agency at the
24 Department of Transportation. I later served as the
25 first deputy administrator and then first acting

1 administrator of the Pipeline and Hazardous Material
2 Safety Administration, also at the DOT in Washington,
3 DC. I later served as a senior advisor and expert
4 (indiscernible) transportation of the -- the
5 transportation secretary on surface and aviation policy.
6 I've mentioned Nouveau and teaching. Otherwise, I'm --
7 I haven't done too much more.

8 Q. I don't know if you mentioned this -- I'm sorry.
9 I don't know if you mentioned this or not, but you also
10 were in charge of operating a pipeline; is that correct?

11 A. Oh, dear, how can I forget that one? Yes.
12 Also, the former president of the Trans-Alaska Pipeline
13 Systems operating company, the Alyeska Pipeline Service
14 Company, where we designed, built, and operated the TAPS
15 system.

16 Q. And when you were outlining your work
17 experience, you mentioned that you were the acting
18 director of PHMSA; is that correct?

19 A. Acting administrator, yes, sir.

20 Q. Thank you.

21 Tell us what PHMSA is and what it does?

22 A. PHMSA is the federal agency charged and designed
23 with operating the -- and developing the Federal
24 Government's jurisdiction as it applies to interstate
25 pipelines, both liquid and gas. And PHMSA's main

1 mission, aside from creating regulations, education,
2 enforcement, is to protect people, property, and the
3 environment from the unintended releases of hazardous
4 materials.

5 PHMSA's jurisdiction extends beyond pipelines to
6 all surface modes of transportation, meaning that the
7 agency is responsible for about 1.3 million shipments
8 per day of hazardous materials by air, land, rail, sea,
9 and then pipeline, which constitute about two-thirds of
10 the energy resources used in our country each day.

11 Q. And does PHMSA regulate CO2 pipelines?

12 A. PHMSA regulates liquid pipelines of which CO2
13 are a subcategory.

14 Q. Okay. And will PHMSA regulate this pipeline if
15 it's approved by the Commission and constructed and put
16 into operation?

17 A. Yes, they will.

18 Q. Provide us just with a little of information
19 with respect to CO2 pipelines given your experience.
20 Are they new from a national perspective?

21 A. No. CO2 pipelines have been around since the
22 1970s. They've been under regulation since the '79 Act.
23 They've operated throughout the country in different
24 configurations since then. And, again, because CO2
25 pipelines are considered liquid lines under 49 CFR 195

1 because they transport in a liquid state, that makes
2 them a liquid pipeline.

3 Q. And, in your opinion, how do safety records of
4 CO2 pipelines compare to other liquid pipelines?

5 A. Very similar, I mean, from an overall pipeline
6 standpoint. Last time I did the math, which was a few
7 years ago, it came out to 99.999952 percent. Pipelines
8 are, by far, the safest form of transporting large
9 quantities of energy products in the country. And CO2
10 pipelines would fall within that standard deviation for
11 liquid lines or gas lines for that matter.

12 Q. And do PHMSA regulations that are applicable to
13 pipelines, do they essentially cover all aspects of the
14 design, construction, and operation of the pipeline?

15 A. They do. Design, construction, maintenance,
16 operation, emergency response.

17 Q. Testing?

18 A. Testing. Pre-service testing and in-service
19 testing, yes.

20 Q. Okay. Can you discuss a few of those things?
21 What are -- what is involved in PHMSA regulations with
22 respect to design?

23 A. So with respect to design, there are certain
24 characteristics that have to be met, which would include
25 anything from the type of pipe that is used, the tensile

1 strength of the pipe, the maximum operating pressure for
2 liquid lines or the maximum allowable operating pressure
3 for natural gas pipelines, location and siting and
4 taking into account geohazards, and then, you know, the
5 construction techniques, the supervision, the percent of
6 welds, qualifications of those constructing the
7 pipelines and so forth.

8 Q. And depth of cover, do PHMSA rules cover that?

9 A. They do. It's a minimum of three feet unless
10 it's in a rocky area, which can be as little as -- don't
11 quote me on this, but I think it's 18 inches. But many
12 pipelines are buried beneath that point.

13 Q. And I believe you said PHMSA regulations cover
14 testing?

15 A. They do, both pre-service testing as well as
16 operational testing. The pipeline -- liquid pipelines
17 are subjected to a hydrostatic test, which is an
18 intentional overpressurization of the system following
19 construction. It's testing the yield strength of the
20 line itself as well as the welds. So water is injected
21 into the pipeline, which is then set beyond a hundred
22 percent of operating pressure, up to 125 percent
23 typically, to ensure the integrity of the line.

24 Q. And I believe you mentioned operational
25 controls. PHMSA has regulations in that area as well?

1 A. Yes. And I think some of those have been talked
2 about today, both from a control room management, the
3 SCADA systems that allow pipeline operators to look at
4 the instantaneous health of the line as well as to
5 initiate emergency shutdowns or controlled shutdowns.

6 From an ongoing operation standpoint, there's an
7 integrity management program called the IMP which was
8 first introduced to liquid lines and then has been
9 expanded to gas lines and other lines, which is akin to
10 a holistic health assessment of a pipeline. It's sort
11 of -- I call it a cradle-to-grave mentality where you're
12 looking at the holistic approach to the whole health
13 during the life cycle of a pipeline. That includes, you
14 know, periodic inspections as well.

15 Q. And considering what we have discussed so far
16 today, is there anything more that PHMSA regulations
17 cover with respect to monitoring the pipeline?

18 A. Well, I mean, I've been in and out of the room
19 so I don't know that I've heard everything but, you
20 know, the ongoing --

21 Q. What I meant, our discussion here today --

22 A. Oh, what we're talking about. Okay. I got you.
23 You know, I think as the exclusive agency
24 responsible for pipeline safety for interstate lines
25 across the country, PHMSA regulations are designed to

1 periodically come out, audit, and inspect pipeline
2 facilities, company records, control room inspections to
3 make sure that the controllers are properly trained and
4 that paperwork as well as real world operational
5 parameters are in place.

6 It's akin to an IRS audit. If anyone's been
7 subject to that, it's not a lot of fun. I think no
8 pipeline operators think PHMSA's audits are a lot of fun
9 either. They're comprehensive.

10 And PHMSA also snap audits upon any complaints,
11 inspection abnormalities, or whistleblower complaints or
12 anonymous complaints that need to be investigated.

13 Q. Now, all the PHMSA rules that you've discussed
14 here today, do they apply to CO2 pipelines as well?

15 A. They do. You know, I've heard a lot about CO2
16 pipelines being distinguished from other pipelines. And
17 you will hear me keep coming back to their liquid lines.
18 This is not new. They are built and maintained the same
19 as a liquid pipeline. They're operated the same way as
20 a liquid pipeline. That's why they're contained in part
21 195 of the liquid pipeline rules, which include crude
22 oil pipelines, refined product pipelines, and CO2.

23 Q. And you may have touched on this. For how long
24 has PHMSA been regulating CO2 pipelines?

25 A. I believe since the '79 Act, but these acts have

1 been updated over time. And keep in mind that -- you
2 know, like at the state government level, the enabling
3 statute is what sets the authority of the agency, but
4 the agency is not static. It is constantly promulgating
5 or issuing regulations, proposing and initiating and
6 finalizing regulations through the Administrative
7 Procedures Act, much as the same way I suspect states
8 and other entities do. So the enabling statute then
9 allows PHMSA to go create all these regulations, and
10 that is -- that is an iterative process that is
11 never-ending.

12 Q. And if this Commission were to approve the
13 application of Summit, what types of inspection would
14 PHMSA conduct if the pipeline were built?

15 A. Well, it would be certain construction
16 inspections, audits that we've already talked about with
17 respect to the materials, the construction, the weld,
18 the depth of cover. PHMSA also likes to come out while
19 the pipe is being laid to make sure that it's being laid
20 properly, that there are no rocks in the bed of the
21 pipeline and that the coating is correct, and then
22 pre-service testing, which we briefly mentioned, and
23 then ongoing periodic inspections of the company and its
24 records. And, you know, the company is required to run
25 internal inspection devices known as pigs. They have to

1 keep records. It's -- it's a lot.

2 Q. In an earlier question that I asked, you used
3 the acronym IMP. Does that stand for -- well, you tell
4 me what it stands for.

5 A. It's the Integrity Management Program. That's
6 that kind of -- if you have an MD and a DO, I equate it
7 to the DO's version of looking at the whole health of
8 the pipeline.

9 So, you know, one of the pieces of the IM
10 program from a smart pig standpoint is you are -- you're
11 running calibration tests, you're running deformation
12 tools, you're running smart pigs that give you a 3D-like
13 analysis, much like medical tools, of what the pipeline
14 looks like. Now we use high-def tools that are similar
15 to high-def TV versus low-def TV. And these records are
16 kept and compared.

17 The whole point behind the IM program is to
18 identify potential risks to pipelines before an upset,
19 i.e., incident, occurs so that we can predict and ensure
20 that there is not an unintended release.

21 Q. Did PHMSA draft IMP regulations while you were
22 employed there?

23 A. Yes. The hazardous liquid IMP rule came out
24 before me, but we were -- we were working on tweaks and
25 interpretive guidance on it. And then there's --

1 there's natural gas IM program. There's a distribution
2 pipeline, a DIMP program. So, yes, it's -- it's, again,
3 sort of an iterative process.

4 Q. What does an IMP intend to accomplish?

5 A. Well, kind of like I just mentioned, an IM
6 program is -- is designed to identify potential issues
7 before they become real issues. And, you know, in -- in
8 the industry parlance, we call these anomalies. And
9 every pipeline has an anomaly. Many of them are created
10 at the factory, just minute, microscopic changes that we
11 can now identify in the construction of the pipeline
12 that will never, ever propagate or grow or have any
13 problem, but by being able to categorize and identify
14 all of these, we then compare, if you will, the CT scans
15 or the MRIs, whatever analogy you want to use, each time
16 to look for -- look for changes.

17 Q. Can you provide a little bit more information
18 with respect to those tests or examinations that you
19 would be required to conduct in an IMP?

20 A. Can you be more specific?

21 Q. Well, you mentioned scanning. I think you used
22 the word CAT scan and those sort of -- any other type of
23 testing that would be required under the regulations.

24 A. Well, there are -- there are other tools that
25 are run. You know, part of it is the -- the right of

1 way that was just mentioned not too long ago, that --
2 and, unfortunately, the right of way is required under
3 PHMSA regulations to be kept clear both for aerial
4 surveillance and -- and look for obstructions or
5 encroachment on the pipeline right of way, much the same
6 way that utility companies, unfortunately, do not maybe
7 prune trees the way we might like around power lines,
8 but that is true. So that's a piece of it as well.

9 These deformation tools that are run or anomaly
10 tools that are run are also meant to identify potential
11 third-party damage or encroachment on a pipeline. We
12 know today that the number one leading cause of pipeline
13 accidents is third-party damage, excavation damage,
14 where somebody inadvertently strikes a line and then
15 doesn't report it. And then that may go years or
16 decades or forever, or it could result in an upset down
17 the road. And so, again, that's why all these tests are
18 done.

19 And I think, if I heard this correctly, Summit
20 mentioned they'd be running smart pigs every five years,
21 which is pretty standard in the industry. And they're
22 very -- they're very complicated and very complex.

23 Q. Now, in conjunction with PHMSA regulations, does
24 it have educational enforcement tools at its disposal?

25 A. Sure, sure. Like any other regulatory agency,

1 you know, the goal is voluntary compliance with the
2 regulation. And sometimes that's done through education
3 and outreach. Sometimes that's done with an enforcement
4 hammer. And, you know, I, you know, say that, yeah, I
5 filed enforcement cases and fined pipeline companies
6 when I was there. Typically, that's the exception. I
7 think the industry has matured a lot over the years.

8 We also looked at number of pipeline damages
9 throughout the country. So when I was there, over a
10 five-year span which preceded me and the part that I was
11 there, pipeline accidents were down by 50 percent. In
12 the last five years, they're down another 25 percent.
13 So I think as both the regulators and operators continue
14 to modernize their programs, we're in a very good spot.

15 Q. There were a number of questions posed by the
16 Commission to Mr. Powell about the control room. And
17 I'm wondering if you can provide us -- you probably
18 weren't in the room, but I'm wondering if you could
19 provide us a little bit more information in terms of
20 whether PHMSA does any control room inspections. And if
21 it does, tell us a little bit about what they're looking
22 for when they're doing those inspections.

23 A. Sure. PHMSA does do control room inspections.
24 That's a very significant part of operations. We've
25 learned over the decades that control room operations

1 and the knowledge of control room operators is very
2 important. A lot of pipeline companies, including the
3 one I used to run, employ people well suited to that
4 field. Sometimes they're former air traffic controllers
5 that have been trained. They're nuclear power operators
6 that have been trained.

7 And the systems have come a long way over the
8 years to where you typically see a graphic depiction, a
9 computer-generated depiction of the entire pipeline.
10 The computer controls themselves, as well as manual
11 redundancies of backup alarms, flashing lights, warnings
12 of pressure changes, are all designed to -- all designed
13 to watch the pipeline and to help the controller watch
14 the pipeline 24/7.

15 Pipeline facilities are usually centrally
16 located, often hundreds or thousands of miles away from
17 where the line is being operated. Most pipelines have
18 at least several redundancies in the case of a
19 communications failure or a power failure, and clearly
20 the move today is to automate a lot of those systems.
21 And, you know, the control room operator is the first --
22 I guess the person watching, trusted to watch the line,
23 just -- again, like a control room operator in a nuclear
24 power plant or anywhere else.

25 Q. Do you find it unusual at all that Summit is

1 proposing to have its control room for the portion of
2 the pipeline that's being operated in North Dakota, that
3 that control room would be in Iowa?

4 A. No. I mean, it's up to -- typically, control
5 rooms are at an operator's primary place of business.
6 It doesn't have to be, but that tends to be fairly
7 typical.

8 And, again, the point is that they're connected
9 in real time, not lag time or near real time, but
10 connected and conveying information that the control
11 room operator can understand in order to diagnose or to
12 troubleshoot a potential system, potential issue.

13 Q. Okay. You've spent some time now explaining the
14 inspections that are going to take place at the control
15 room. Will PHMSA conduct inspections at the time the
16 pipeline is built if this Commission were to approve the
17 pipeline?

18 A. Of the control room?

19 Q. No. Of the --

20 A. The whole line?

21 Q. The pipeline itself.

22 A. Yes. Yes, they will.

23 Q. Okay. Can you tell us a little bit of what
24 PHMSA will be looking for in those inspections?

25 A. Well, again, they'll be -- they'll be coming out

1 to look at the construction activities. They'll also be
2 auditing the third-party inspectors or other inspectors
3 that a pipeline company has to look at. They'll be
4 pulling X-rays of welds. They'll be looking at the
5 manufacturing of the pipes. They'll be looking at the
6 qualifications of the pipeliners that are building the
7 pipes. They'll be ensuring appropriate depth of cover
8 and that there's no foreign damage -- or foreign items
9 or rocks in the backfill material. They will -- golly,
10 they'll be looking at the qualifications of the control
11 room, looking at how the control room is set up and
12 ensuring compliance.

13 Q. Okay. There's been a lot of discussion -- maybe
14 you were in the room, maybe you were not -- about
15 dispersion analysis. Can you describe for us what
16 dispersion analysis is?

17 A. I'm not an expert on dispersion analysis, but
18 dispersion analysis is required by PHMSA as something
19 that is considered in the overall management, emergency
20 response program for pipelines. It -- it has -- it
21 assumes certain facts. It assumes, depending on how
22 different scenarios are run, different size of releases
23 under different topography at different locations,
24 different weather. And it is all trying to indicate a
25 potential impact area should there be an unintended

1 release.

2 Q. Okay. And it's been testified to earlier that
3 these dispersion analyses, they're submitted to the
4 PHMSA because it's a regulation, but that PHMSA holds
5 them confidential. Can you explain why?

6 A. Sure. They do. And, you know, I know this is a
7 -- this is not the first time this has come up. It's a
8 -- it can be a sensitive subject.

9 The whole point behind this is we discovered
10 after 9/11 that pipelines, as a piece of our critical
11 infrastructure, are a potential target. And, you know,
12 without going into the details during my tenure there,
13 there were specific threats against specific pipelines
14 by maligned actors. And at the advice of the Department
15 of Homeland Security, these items as well, quite
16 frankly, as some of the other pipeline perimeter
17 locations, overall size, the national mapping system was
18 detuned so you can't see the entire system or you need
19 to log in credentials, designed to buttress and to raise
20 the security of these pieces. If -- if you know what
21 could go wrong, then you can figure out how to make that
22 go wrong. And, you know, protecting the public is an
23 important component of it. And obviously the Federal
24 Government, both at PHMSA and at Homeland Security,
25 which has security jurisdiction, is trying to balance

1 that.

2 So a lot of these pieces are considered safety
3 sensitive information, SSI, and that's a federal
4 designation which makes it exempt from FOIA. And what
5 is or what isn't SSI is controlled by the Department of
6 Homeland Security.

7 Q. Is it somewhat akin to if you're hired to
8 protect a particular person or a governmental official,
9 you don't provide the whole world with how you're going
10 to do that?

11 A. That's true.

12 And, by the way, I just misspoke. It's security
13 sensitive information. Not safety sensitive. My bad.
14 In government we tend to do a lot of acronyms and then
15 forget what they stood for at some point.

16 But can you say -- I'm sorry. Can you repeat
17 your question?

18 Q. I said is it somewhat akin to hiring security
19 and then security not wanting to provide to the whole
20 world how they're going to protect an individual or a
21 governmental official?

22 A. Well, I mean, I suppose you could equate it to
23 that. If you said, you know, "What's the route the
24 president is taking tonight," you're not going to get an
25 answer.

1 But, look, you know, I think it's in the best
2 interest of all involved to try to maximize transparency
3 wherever possible. Sometimes it's not possible.
4 Sometimes things can be kept within or an agreement
5 between agencies, I've seen that before as well, can be
6 kept with some of the state partners but not released to
7 the public. Again, it's a balancing act.

8 Q. Provide us with just a little bit of information
9 as to what your understanding is and why emergency
10 response plans are submitted to PHMSA?

11 A. Yeah. So PHMSA can review them to ensure their
12 adequacy and to ensure that, from a third-party
13 standpoint, that whoever has put them together has
14 considered, you know, factors that may be not just
15 rubber-stamped, that might be unique to each pipeline.
16 And sometimes these response plans go back with
17 questions, sometimes they don't.

18 The other point behind an emergency response
19 plan is both to consider the initial response as well as
20 a ramp-up. What is your plan for responding to an
21 incident?

22 Q. Okay. Can you tell us why, in your opinion, you
23 believe CO2 pipelines are important to the country at
24 this point in time?

25 A. Well, yeah, they are. You know, as -- and, you

1 know, politics aside, decarbonization has been a
2 priority for both Democrats and Republicans. And, you
3 know, from the perspective of energy, there are certain
4 things that could be transitioned to renewables. There
5 are certain things that may take longer, like hydrogen,
6 for example. There are also some traditional
7 hydrocarbon reducing industry that are harder to
8 decarbonize.

9 And so what the government has done, I think
10 really in a bipartisan manner through several different
11 laws, is to create incentives for capturing CO2 at the
12 emission source.

13 Also, the potential for capturing CO2 and
14 removing it from the air under a principle called direct
15 air capture. So whether it's an industrial emission
16 like an ethanol plant or it is perhaps down the road
17 removing carbon dioxide from the air, the idea is that
18 it is then captured, transported, in this case in a
19 liquid state, to an underground storage facility in
20 order to keep it from -- from contributing to CO2 in the
21 atmosphere.

22 Q. Okay. Let's switch gears a little bit. Once
23 again probably when you were not in the room there were
24 some questions posed to Mr. Powell with respect to the
25 incident that took place in Satartia, Mississippi. Are

1 you familiar with that incident?

2 A. Mm-hmm.

3 Q. And have you had an opportunity to read any of
4 the reports that were issued as a result of that
5 incident?

6 A. Yeah. I mean I'm generally familiar with it.
7 I've read PHMSA's accident investigation at some point
8 and -- yeah, I'm generally aware of the incident and
9 what occurred.

10 Q. Okay. Can you describe for us just briefly what
11 PHMSA concluded in their report?

12 A. Well, there were -- I think there were a couple
13 important takeaways from this report. One is that a
14 natural geohazard wasn't considered and that was
15 subsidence from erosion of land following heavier than
16 usual rainfall. That then compromised the integrity of
17 the line and the line ruptured.

18 I think they also found that the operator,
19 Denbury, at least in PHMSA's opinion, and I'm not sure
20 what happened of any enforcement cases, failed to follow
21 certain existing pipeline safety regulations, including
22 an inadequate dispersion model, if memory serves me
23 correct.

24 Q. Do you believe that Summit can put in place in
25 their design and construction of this proposed pipeline

1 things that will prevent a Satartia incident in North
2 Dakota?

3 A. Yeah, I believe they can and I think every
4 prudent operator should. And, you know, that's --
5 pardon me. That's one of the benefits, if you will --
6 and I hate to say benefits after there's been an
7 accident, but PHMSA likes to do a very thorough review,
8 as they should, following an accident, oftentimes in
9 combination with the NTSB, who also has accident safety
10 jurisdiction over pipelines, to figure out what
11 happened, why, and then look at how it can be prevented
12 in the future.

13 So oftentimes PHMSA will issue technical service
14 bulletins, education to operators pointing out things
15 they could have gotten better.

16 Q. There have been some suggestions at county
17 meetings that have taken place here in North Dakota, not
18 only Burleigh County but other counties as well, that
19 Summit is moving too quickly and that Summit should wait
20 until PHMSA adopts other rules or rule changes with
21 respect to CO2. What's your response to that?

22 A. Yeah, I mean I -- it has been my experience it's
23 an argument that's been raised by people who just prefer
24 the pipeline not to be built. It's the cautionary
25 "Let's do no harm, let's wait." Unfortunately, you

1 know, that's very difficult to do. I think CO2
2 pipelines are safe as regulated today. Can there always
3 be improvements? Absolutely. But if we wait for the
4 next smart air bag, if we wait for the next self-driving
5 car technology, we'd never drive.

6 And there's no guarantees this regulation will
7 even come out. PHMSA's rulemakings tend to be multiple
8 years. During the Obama Administration, which one would
9 think would want to push out regulations, PHMSA couldn't
10 get a rule out in four to six years, and that was called
11 the mega rule. And they finally had to can it and put
12 it back into little pieces to get anything passed.

13 Regulations are subject to notice-and-comment
14 under the APA so there's no foregoing conclusion it will
15 be issued in its current form after public comment.
16 There's no -- there's no guarantee it will get through
17 the Office of Management and Budget's review. The
18 cost-benefit rule comes into play on regulations and --

19 So, yeah, I mean, we could be waiting ten years
20 for that. We could be waiting -- I don't -- I, frankly,
21 don't think it will happen before the next presidential
22 election in -- what is it now? What year are we in?
23 Whenever that is. '24, I guess. Yeah.

24 Q. Let me represent to you that there are -- there
25 is a product pipeline that goes through Bismarck in an

1 east-west direction, and the product line also -- well,
2 the product line goes in an east-west direction, and
3 there's also a natural gas pipeline that runs through
4 Bismarck in an east-west direction as well as a
5 north-south direction.

6 Do you believe or do you have an opinion with
7 respect to whether those sort of pipelines are more
8 dangerous than a CO2 pipeline?

9 A. Well, I'm not sure of the size or the pressure
10 of what you're suggesting, but I think -- you know, a
11 CO2 pipeline exhibits the normal characteristics of a
12 liquid pipeline except that it doesn't ignite. Right?
13 It's not flammable. CO2 pipeline in its liquid form
14 exhibits some characteristics of a natural gas pipeline
15 should there be an unintended release into the
16 atmosphere where it transitions to gas. I don't think a
17 CO2 pipeline is any more hazardous, and in many respects
18 it's less hazardous than either a hazardous liquid
19 pipeline or a natural gas transmission line under high
20 pressure.

21 Q. There are some who would suggest that four feet
22 isn't deep enough for a CO2 pipeline to be buried. Any
23 thoughts or comments on that?

24 A. The depth of cover rules are there primarily to
25 guard against third-party damage. Again, we've said

1 that excavation damage is -- tends to be the leading
2 cause of pipeline accidents. And you can split that
3 data a couple different ways, but maybe, you know, a
4 good point is the Trans-Alaska Pipeline System. Half of
5 it's above ground, half of it's below ground.

6 You know, as long as it -- a pipeline is
7 appropriately marked and as long as the right of way is
8 clearly delineated, you know, through public education
9 and outcome, someone will have to send out notices to
10 everyone living along the right of way, "Hey, there will
11 be a pipeline here, you know, please don't do certain
12 things or call us," that's part of the education
13 outreach that's required.

14 Any time anybody digs, we call 811 now, which
15 was a system I helped put in during my time at PHMSA.
16 It replaced all these regional numbers that you used to
17 have to figure out who to call to just a one-call
18 center. All that is designed to reduce excavation
19 damages.

20 So, again, depth of cover is primarily to keep
21 everybody else away from the pipeline. It's not that
22 the pipeline needs to be in any certain depth.

23 Q. Are we talking about considerably different
24 training of emergency responders or first responders if
25 we're talking about training somebody for a CO2 pipeline

1 incident or a natural gas or (indiscernible) products
2 pipeline?

3 A. No. I think they're similar. One of the things
4 that first responders have, and I would assume every
5 first responder in the state of North Dakota would have
6 one, is a publication produced by PHMSA. It's the
7 orange book called the Emergency Response Guidebook. It
8 informs paid as well as volunteer firemen, ambulances,
9 police officers how to respond to an incident. It used
10 to just be for hazmat-only non-pipeline, and then we put
11 a piece in the front on pipelines as well.

12 You know, I think you might want to ask the IF
13 -- International Association of Fire Chiefs or others,
14 but I think they would tell you that they have a pretty
15 good idea what's going on and how to respond to it if
16 you give them just some -- some limited guidance.

17 It's also probably important to mention that
18 PHMSA gives out emergency response grants, some of them
19 are half a million dollars apiece, others are a hundred
20 thousand dollars apiece, you know, and in this
21 collaborative effort to make sure first responders are
22 trained. There are also specific fire academies that
23 first responders can go to.

24 But, you know, the characteristics of a CO2
25 pipeline would mimic or mirror some of those haz- --

1 other hazmat spills, railcar spills, tanker truck
2 spills, as far as initial response protocols for
3 something that changes to a gas that is heavier than
4 air.

5 Q. Based on your educational background and your
6 work experience, what has been your experience with
7 respect to residential development near a CO2 pipeline?
8 Does it have a negative impact?

9 A. I don't have any direct experience of -- of
10 permitting up against a CO2 pipeline. I do have
11 experience with liquid pipelines, which, again, calling
12 this a liquid pipeline. I served as a planning and
13 zoning commissioner for a number of years also so I have
14 firsthand experience voting on natural gas pipelines and
15 other things.

16 The -- usually it happens the other way around.
17 Usually it's about how far can a development be from a
18 pipeline versus where can a pipeline be relative to
19 where everybody else is. You know, we have pipelines --
20 let me see -- yeah, roughly -- I'm going to round up,
21 but 3 million miles of pipelines. It's more than would
22 wrap the earth a hundred plus times. They're
23 everywhere. You know, we have them everywhere. If you
24 go outside and look at people in the locate service with
25 their colored paint on the ground -- which I hate, by

1 the way, there's a better way of doing this. But, yeah,
2 that underground infrastructure is everywhere. And it
3 comes in all shapes and sizes.

4 I've seen hazardous liquid refined product
5 pipelines -- refined product, I guess we should define,
6 we're talking about it, those things that have come out
7 of a refinery. So unleaded fuels, diesel, jet fuel, for
8 example, going across the middle of a parking lot right
9 next to a hotel in Atlanta. You know, pipelines go down
10 the middle of city streets. It's -- they're everywhere.
11 And I think because they're not readily seen, we tend to
12 forget about them until we want to talk about them.

13 MR. BENDER: That's all the questions I have.

14 ALJ HOGAN: All right. Mr. Pelham, any
15 questions?

16 MR. PELHAM: I think just a few.

17 CROSS EXAMINATION

18 BY MR. PELHAM:

19 Q. Good afternoon, Mr. McCown. Just so I
20 understand a little bit about your role here, are you a
21 consultant then for the company on this case?

22 A. Yes. Summit has asked me to consult on this
23 case. I'm not directly employed by them.

24 Q. Right. And so I think you mentioned Nouveau --

25 A. Yes.

1 Q. -- Consulting. Is that the consulting company
2 you're here with?

3 A. It is.

4 Q. Okay. And as far as specific review of this
5 project, do you have any -- it seems that the questions
6 from Mr. Bender were tailored to your experience with
7 PHMSA and your background generally in the industry. Do
8 you have any opinions or review of the actual project on
9 this case?

10 A. I've not reviewed the actual project, no.

11 Q. Okay. I don't have any questions for you.
12 Thank you.

13 A. Yes, sir.

14 ALJ HOGAN: Mr. Schock, any questions?

15 Mr. Bakke, any questions?

16 MR. BAKKE: Yes, Your Honor.

17 CROSS EXAMINATION

18 BY MR. BAKKE:

19 Q. And so you're here, Mr. McCown, as a hired
20 expert for Summit?

21 A. I hope I'm getting paid, yes.

22 Q. Okay. And what is Summit paying you?

23 A. My hourly rate's roughly 500 an hour.

24 Q. Okay. So how much are you charging Summit to
25 appear here today?

1 A. I don't mean to appear flippant, but it depends
2 on how long I'm here. It's by the hour.

3 Q. Okay. From when you leave your house to when
4 you return home?

5 A. As is standard with expert witnesses and
6 contractors in the industry, yes.

7 Q. And where do you live?

8 A. I reside in Cincinnati, Ohio.

9 Q. And I was trying to keep up here, but it seems
10 to be a long list of topics that you're telling the PSC
11 you're an expert on; is that correct?

12 A. That's your characterization, sir. I don't know
13 what you mean by --

14 Q. Here's the list I have that I heard you're
15 offering opinions on or that Mr. Bender asked you to
16 offer opinions on. Firefighting was one of them?

17 A. I have been a trained industrial firefighter,
18 that's true. I wouldn't necessarily say it's an expert.
19 I'm here to answer any questions that I'm asked as best
20 as I can as a former head of PHMSA and as a former
21 president of a pipeline operating company.

22 Q. When did you serve as a firefighter and where?

23 A. In Alaska while I was the president of Alyeska
24 Pipeline Service Company.

25 Q. Was that a full-time job as a firefighter?

1 A. No. It's a volunteer fire brigade.

2 Q. How long did you do that?

3 A. The two years I was there.

4 Q. Is that the extent of your firefighting
5 experience?

6 A. No. I was a volunteer firefighter, as we all
7 have to be, in the Navy.

8 Q. How long was that?

9 A. Oh, about 25 years or so I was in the Navy. I
10 wasn't a firefighter that entire time, but when you're
11 on a ship, everybody's a firefighter and you go through
12 training.

13 Q. Was that your MOS? That was your designation,
14 was firefighter?

15 A. No. I was a naval aviator.

16 Q. Have you ever treated or responded to a CO2 leak
17 as a firefighter?

18 A. Can't say that I have.

19 Q. Okay. You were offered -- offering opinions on
20 emergency services. Have you ever responded to a CO2
21 leak in regards to emergency services provided?

22 A. I don't recall saying I was an emergency
23 services expert. I talked about PHMSA's regulations of
24 emergency response.

25 Q. You offered opinions on pipeline design. Are

1 you an engineer?

2 A. I offered opinions on pipeline design as the
3 former federal regulator of all pipelines. I'm not an
4 engineer.

5 Q. Okay. Have you ever designed pipelines?

6 A. No, I've not.

7 Q. Have you ever designed a CO2 pipeline?

8 A. I guess I don't understand the question why
9 you're saying CO2. It's a liquid pipeline, sir.

10 Q. Because that's what we're dealing with here, is
11 a CO2 pipeline.

12 A. It's a liquid pipeline as far as the Federal
13 Government's concerned. And so, no, I've not designed a
14 liquid pipeline.

15 Q. Okay. Have you ever designed any component of a
16 CO2 pipeline?

17 A. I've not designed any component of a CO2 liquid
18 pipeline.

19 Q. Have you ever been involved in pipeline
20 construction for CO2 pipelines or other liquid
21 pipelines?

22 A. No.

23 Q. Okay. Do you have any designations in the
24 safety field, an advanced degree in safety, any
25 certifications in safety?

1 A. I would have had certain certifications that I
2 was required to do as the president of the pipeline
3 company with respect to right of way industrial
4 facilities, pipeline operations, OSHA safety, fall
5 prevention safety, etcetera.

6 Q. So do you carry any safety designations where
7 you've obtained advanced training or credentials by any
8 of the safety organizations?

9 A. Can you define?

10 Q. Sure. Industry groups that provide
11 certifications for safety people whose full-time job
12 typically is to be a safety inspector on pipelines.

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Okay. Have you ever been charged with the
17 responsibility for checking the safety of pipelines?

18 A. Yes. As the president of a pipeline company.

19 Q. I'm asking about you personally going out and
20 checking the pipeline.

21 A. I've personally gone out with personnel and
22 checked the pipeline. I would physically drive the
23 entire 800 miles of the pipeline in Alaska every three
24 months. And I've been inside the pipeline. I've been
25 inside of pipe within Alyeska facilities at pump

1 stations.

2 Q. And how long was that for? How long did you
3 work there?

4 A. Two years.

5 Q. Okay. Any other experience where you were
6 involved with pipeline inspections of any type?

7 A. Yes. As the head federal regulator, I would go
8 out into the field with pipeline safety personnel to
9 occasionally inspect pipelines so I had a better
10 understanding of how it works.

11 Q. Okay. Have you ever inspected a CO2 pipeline?

12 A. A CO2 liquid pipeline?

13 Q. Sure. A CO2 pipeline like Summit is proposing
14 to install in North Dakota.

15 A. Not to my knowledge.

16 Q. Have you ever operated a CO2 pipeline?

17 A. I've not operated a CO2 -- a specific CO2 liquid
18 pipeline, no.

19 Q. You offered opinions on dispersement modeling
20 for CO2. Have you ever done any dispersion modeling of
21 a CO2 leak?

22 A. I'm sorry, I don't know that that's a fair
23 characterization of my testimony. Did I offer -- I said
24 I'm aware of pipeline dispersion modeling. I never said
25 I was an expert on it.

1 Q. Well, Mr. Bender asked you questions about the
2 dispersion modeling done by Summit and whether you
3 thought that could be done, should be done, and so on.
4 And I want to explore a little bit, what is your
5 experience in doing dispersion modeling of a CO2 leak,
6 if any?

7 A. I think I testified that it's --

8 MR. BENDER: Objection. It's a
9 mischaracterization of my questioning.

10 MR. BAKKE: I can rephrase it.

11 Q. (BY MR. BAKKE) Do you have any experience in
12 doing dispersion modeling of a CO2 leak?

13 A. Physically conducting them personally, no.

14 Q. Okay. Do you hold yourself out as a CO2 expert?

15 A. I don't think I ever said that.

16 Q. This consulting business that you have, it
17 sounds like it's far-reaching, surface and aviation
18 policy. Do you specifically, through your consulting
19 company, hold yourself out as having expertise on CO2?

20 A. I -- I think I said that when I served as an
21 expert consultant to the Secretary of Transportation, my
22 portfolio included aviation and surface programs. At
23 Nouveau Consulting, I primarily consult with respect to
24 DOT regulated entities, and I do serve as an expert
25 witness in private litigation cases involving DOT

1 regulations.

2 Q. When were you involved with PHMSA?

3 A. Roughly 2005 through 2007 and then again
4 in 2016.

5 Q. And so I think you said at one time you were the
6 acting director of PHMSA?

7 A. I was simultaneously both PHMSA's first deputy
8 administrator, which is the COO of the organization, and
9 then for a year and a half I served as the acting
10 administrator or the CEO of the organization as well.

11 Q. Okay. And so from 2005 to 2007 what were your
12 job duties and responsibilities with PHMSA?

13 A. I oversaw an agency of approximately 500
14 personnel with a budget of \$200 million to ensure the
15 safe and secure movement of energy transportation
16 throughout the United States.

17 Q. So you were an administrator?

18 A. That's right.

19 Q. You weren't a field guy?

20 A. No, I wasn't a field guy, but I spent a lot of
21 time in the field because I don't think you can
22 accurately understand how to be a regulator if you're
23 not in the field often.

24 Q. And from 2005 to 2007 when you worked for PHMSA,
25 was that an appointed position?

1 A. It was, yes.

2 Q. Okay. Who appointed you?

3 A. I was first appointed by Norman Mineta, Democrat
4 from California who served under the George W. Bush
5 Administration. I was reappointed by Secretary Mary
6 Peters, Republican from Arizona. And then later
7 appointed by Secretary Chao.

8 Q. And in 2016 how long were you at PHMSA?

9 A. I told them I'd give them 60 days and I was
10 there 90, but it wasn't just PHMSA. I was in the office
11 of the Secretary of Transportation. There were no
12 political appointees at that time in the agency or in
13 most of DOT.

14 Q. So you were with PHMSA in 2016 for 60 days?

15 A. I was with the Department of Transportation for
16 90 days, even though I said I'd only stay 60, advising
17 the secretary on all surface programs which included
18 PHMSA because PHMSA did not have any agency heads at
19 that time.

20 Q. The work that you did in the energy industry
21 where you worked for Alyeska, was that the only job that
22 you've had in your career where you've worked for a
23 pipeline company?

24 A. That's true.

25 Q. For two years?

1 A. Yes.

2 Q. And what was your position there?

3 A. President.

4 Q. So, once again, administrator?

5 A. Chief operating -- or chief executive officer of
6 the pipeline and the chief operating officer. Because
7 we don't have a separate COO position.

8 Q. Have you ever responded to a CO2 leak on a
9 pipeline before?

10 A. No.

11 Q. Have you ever investigated a CO2 leak before in
12 a pipeline?

13 A. Hasn't happened during my time.

14 Q. Have you seen this dispersion modeling that
15 Summit's indicated it's done?

16 A. I have not.

17 Q. Okay. So you don't know what it shows in terms
18 of the plume or where the plume would travel or what
19 would happen in the event of a leak in the CO2 pipeline?

20 A. My testimony is I haven't seen it, sir.

21 Q. Okay. And do you know what modeling information
22 was done or considered in performing their modeling?

23 A. I do not.

24 Q. Okay. Are there third parties that conduct
25 dispersion modelings for pipelines?

1 A. As I sit here today, I can't answer that one way
2 or the other.

3 Q. Okay. Do you know whether Summit did its own
4 dispersion modeling for the CO2 pipeline?

5 A. I have no information on that.

6 Q. The reason I ask about third parties is if you
7 hire a third party to do a dispersion modeling, that
8 would be considered neutral and independent; correct?

9 A. Not necessarily. All of these -- yeah, I guess
10 I -- you're always doing the work for somebody, but when
11 you -- I'm not sure that the independence would change
12 whether it's done in-house or out-of-house.

13 Q. Well, does PHMSA do dispersion modeling of
14 pipelines?

15 A. No. I mean, that would be a waste of taxpayer
16 money. They expect the regulated entities to do them
17 and then they grade the homework.

18 Q. Okay. And so what you're saying is PHMSA's not
19 going to do any dispersion modeling of this CO2 pipeline
20 that Summit's requesting on their own?

21 A. I'm sure they have the capability of doing it
22 but -- and I'm not there so I don't want to substitute
23 my judgment for the administrator, but if I were still
24 there, I would probably not undertake -- take it on my
25 own unless I had a good reason to.

1 Q. You were asked some questions about whether the
2 design by Summit of their pipeline could potentially
3 avoid a Satartia type of incident, and I'd like you to
4 look at Exhibit 147, please.

5 A. Okay. How does this work?

6 ALJ HOGAN: I think it's the other book.

7 THE WITNESS: Over here?

8 ALJ HOGAN: Yes.

9 A. Okay. 147?

10 Q. Yes.

11 A. Okay.

12 Q. This document, which is issued by the Department
13 of Transportation -- and you recognize it to be a
14 Department of Transportation publication; correct?

15 A. I've never seen this before nor have I read it.

16 Q. Well, if you look at the bottom of it, the
17 source is identified as www.phmsa.gov/news/phmsa. You
18 recognize that as being a government -- U.S. Government
19 publication --

20 A. It purports to be, yes.

21 Q. Okay. And it says "PHMSA Announces New Safety
22 Measures to Protect Americans From Carbon Dioxide
23 Pipeline Failures After Satartia, Mississippi Leak";
24 correct?

25 A. Sir, I'm -- is there a question? I mean, I

1 think the document speaks for itself.

2 Q. Sure. Have you seen this document before?

3 A. I have not. If you would like me to take a few
4 minutes to read it, I don't really feel I can answer
5 questions on a document I've never seen.

6 Q. No. That's okay. My only point is your
7 opinions you're offering here today to the PSC don't
8 take into account the government publication on the very
9 incident that the PSC is being asked to address during
10 this hearing, which is the possibility of a leak and the
11 safety of a CO2 pipeline, and you haven't even looked at
12 the PHMSA publication that's directly on point on this
13 issue. Is that true?

14 A. I disagree with that characterization.

15 Q. You said that the reason that a pipeline will
16 sometimes move forward without waiting for the PHMSA
17 regulations to be updated is because a lot of times
18 people complain that they want to wait for the new
19 regulation, but their real motivation is they just don't
20 want the pipeline going in. Is that what you said?

21 A. I think that is sometimes the case, yes.

22 Q. Okay. But we know that's not true in the
23 situation of Mr. Warford because Mr. Warford isn't
24 opposing the Summit pipeline. He's just saying, as the
25 former mayor and as a landowner, he doesn't think that

1 pipeline should be routed in the path of the greatest
2 development of the city of Bismarck. Do you disagree
3 with that line of thinking?

4 A. I do from the perspective that pipelines are
5 inherently safe, have an inherently safe safety record.
6 The CO2 pipeline is a liquid pipeline. Yes, I disagree
7 with that. Pipeline infrastructure is quite safe.

8 Q. Okay. But your theory that people are maybe
9 objecting just because they don't want the pipeline at
10 all apparently doesn't apply in this situation. True?

11 A. Well, I don't know your client or the gentleman
12 you're speaking of. I can tell you from my experience
13 that sometimes people use a safety argument when they
14 really just don't want it built in their backyard. The
15 NIMBY-ism or the BANANA-ism is sometimes really the
16 motive.

17 Q. Is that your assumption here as a paid expert
18 for --

19 A. No. I'm just saying that's often the case.

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

21 ALJ HOGAN: Mr. Leibel, any questions?

22 CROSS EXAMINATION

23 BY MR. LEIBEL:

24 Q. Have you reviewed --

25 ALJ HOGAN: Can you turn your microphone on,

1 please? Thank you.

2 Q. Have you reviewed Summit's application or any of
3 their submissions to the PSC in this case?

4 A. I've not been asked to do so, no.

5 Q. So you haven't looked at them at all?

6 A. The actual application, no, I have not.

7 Q. Have you testified for Summit in other hearings
8 across North Dakota or Iowa or any of these other
9 states?

10 A. I believe I've submitted an affidavit of written
11 testimony for South Dakota, but I've not appeared at any
12 other hearing nor have I otherwise testified on behalf
13 of Summit or any other projects for the company ever.

14 Q. Now, the Satartia incident happened in 2020 so
15 you were well out of PHMSA by then; right?

16 A. That's true. I was in Alaska.

17 Q. And you had been out of PHMSA for almost
18 15 years; correct?

19 A. With the exception of the brief redo during the
20 beginning of the Trump Administration.

21 Q. Okay. Is it fair to say that at the time of the
22 Satartia failure, that PHMSA was regulating that
23 pipeline?

24 A. Yes. They would have been the regulator at the
25 time, right.

1 Q. And they would have been supposedly inspecting
2 that pipeline which you had -- as you had indicated
3 earlier PHMSA did?

4 A. I'm sorry, what was the last part? PHMSA did or
5 did not?

6 Q. I believe you testified in response to some
7 questions from Mr. Bender that PHMSA conducts periodic
8 investigations of pipelines.

9 A. Correct.

10 Q. And I assume that you were not asking the
11 Commission to assume that just because the PHMSA
12 investigates, that doesn't rule out the possibility of a
13 failure; correct?

14 A. It doesn't.

15 And just to be a little more clear, PHMSA also
16 has a state program where states can become certified
17 agents of PHMSA and then the state pipeline authority
18 actually conducts the intrastate inspections. Without
19 looking it up, I don't know if Mississippi participates
20 in that program or not so I don't know if it was --
21 whether it was PHMSA's responsibility or the State of
22 Mississippi to inspect that line.

23 Q. Okay. Do you know whether North Dakota
24 participates in that program?

25 A. They do not participate in the program. I -- I

1 wish they would. There's a lot of money available and
2 training available, but they -- they do not participate
3 on the liquid side.

4 Q. You mentioned -- and this is kind of my last
5 group of questions. You mentioned some issues about the
6 depth of coverage, and I think you indicated that during
7 your time at PHMSA was when the 811 project was started.
8 Is that accurate?

9 A. When it was implemented. It was a product of
10 many years, many people putting it together, including
11 wrestling a three-digit number from the forces that be
12 in government. But yes.

13 Q. Okay. Do you have any experience on kind of the
14 operation of a farm in a rural area?

15 A. I am from rural southeastern Ohio, but my family
16 were orchardists, not ag necessarily, so I'm not sure I
17 would.

18 Q. So are you offering testimony to the Commission
19 that in a rural area that undergoes regular farming with
20 tractors and plows, that four feet is sufficient to
21 permit the surface to be used as before?

22 A. That's an interesting question. I mean, my
23 assumption is if it were not safe, PHMSA would have
24 different regulations, but I'm not holding myself out as
25 an ag expert on crop roots or rotations or anything

1 else.

2 Q. Because you don't know what our section lines in
3 North Dakota look like or our -- whether we get stuck in
4 the mud in the spring at all or anything like that?

5 A. I do know that you get stuck in the mud in the
6 spring in the breakup, yes.

7 Q. All right.

8 MR. LEIBEL: I have no questions.

9 ALJ HOGAN: Commissioner Christmann.

10 Oh, I'm sorry, you're right. Mr. Pranis, I
11 don't mean to forget you, but I think I just did. Did
12 you have any questions?

13 MR. PRANIS: No, Your Honor. Thank you.

14 ALJ HOGAN: All right. Thank you.

15 Commissioner Christmann.

16 COMMISSIONER CHRISTMANN: I think I only have
17 one but -- you said that emergency response plans are
18 submitted to PHMSA to ensure adequacy; is that correct?

19 THE WITNESS: I think that's correct.

20 COMMISSIONER CHRISTMANN: So how does PHMSA
21 evaluate that? And here's what I'm getting at. If the
22 emergency response plan calls for, you know, certain
23 things to be carried out by a local agency, maybe a fire
24 department, an ambulance department, a sheriff's office,
25 something like that, keeping in mind that we have some

1 very small counties that this pipeline traverses, low
2 population, small staff, volunteer fire departments,
3 those kind of things. Does PHMSA evaluate the
4 organizations that the emergency response plans assign
5 duties to to see whether they are, in fact, capable of
6 doing what's being recommended?

7 THE WITNESS: That's a very great question and I
8 don't know that answer, that level of granularity. I
9 can find out. We can ask PHMSA. I'm not certain. The
10 emergency response plan requires that, for different
11 parts of the pipeline, that the response be adequate.
12 Responses often use local first responders for an
13 immediate response, but then the responses are staged up
14 with either company personnel, outside resources,
15 contractors. There's a ramp-up period over time but I'm
16 -- I don't know the answer to your question. I
17 apologize, Commissioner.

18 COMMISSIONER CHRISTMANN: Thank you. I have no
19 other questions.

20 ALJ HOGAN: Commissioner Haugen-Hoffart.

21 COMMISSIONER HAUGEN-HOFFART: Thank you.

22 First of all, I want to say thank you to your 25
23 years of military service to the Navy.

24 THE WITNESS: Thank you. Sometimes it was
25 actually fun.

1 COMMISSIONER HAUGEN-HOFFART: But thank you.

2 You talked about PHMSA's role. Can you explain
3 a little bit about PHMSA's role regarding cybersecurity
4 and physical security?

5 THE WITNESS: Sure. Sure. Obviously that's
6 become an issue post the Colonial incident where
7 ransomware attack brought that pipeline down. CISA, the
8 -- I'm going to forget the acronym now -- the cyber
9 infrastructure something administration -- security
10 administration, there we go, is in charge of the
11 physical security. PHMSA's Congressional mandate talks
12 about the safe and secure movement of products, but that
13 security part is more limited to the hazmat side. It's
14 the Department of Homeland Security, the Transportation
15 Security administrator, and CISA that have primary
16 jurisdiction for cybersecurity. It's a very important
17 issue.

18 I can only tell you from personal information in
19 operating the Trans-Alaska pipeline, we had our own
20 cybersecurity department. We had our own fusion center.
21 All incoming and outgoing traffic was checked. The FBI
22 considered us a primary customer. I don't know if I
23 ever want to be a primary customer of the FBI, but they
24 viewed it as that. Every piece of equipment that we
25 tested before it went on the pipeline was separately

1 tested to make sure that it couldn't be perhaps
2 controlled by any other outside sources. The SCADA
3 systems that operate the actual pipeline, that is a
4 dedicated -- typically a dedicated backbone support. In
5 some cases, it's intentionally segregated from the
6 internet. In other cases, there's a backup that might
7 either be a primary fiber line or a backup satellite
8 communications or internet can be used with certain
9 safety protocols.

10 I think the industry has learned a lot from the
11 Colonial piece, which was really not a malign attempt to
12 damage the pipeline but was an extortion attempt.

13 I can tell you from personal experience, we
14 tested our operations and found that they were -- they
15 were immune from attack. We also participated in -- and
16 I don't know if this is something that Summit does or
17 not, but we have what's called a white hat group that
18 comes in and intentionally tries to hack into our
19 system. We also took advantage of the Department of
20 Homeland Security's initiative which involved
21 cooperation between DHS and one of the national labs to
22 have government experts come in and try to hack into our
23 system. So it's something that's taken very seriously
24 by the industry.

25 COMMISSIONER HAUGEN-HOFFART: So just to recap,

1 if this application is approved, PHMSA will be reviewing
2 Summit's physical and cybersecurity plans? Even
3 understanding that there's critical information that's
4 sensitive on that, but they will be reviewing it?

5 THE WITNESS: I'm going to punt because I'm not
6 sure on the cyber piece, whether that's reviewed by
7 PHMSA or not.

8 COMMISSIONER HAUGEN-HOFFART: Okay. And maybe
9 that's something I can ask somebody from the company
10 going down.

11 PHMSA does advisories, they issue advisories.
12 Can you explain a little bit about when advisories are
13 issued and the implications of them and the
14 responsibility to companies in that regard?

15 THE WITNESS: Sure. And I'm sorry if my
16 previous long-winded answer wasn't exactly relevant.

17 COMMISSIONER HAUGEN-HOFFART: No. It's very
18 good. It's a very critical thing, and I'd have to say
19 why the FBI is involved is because if it's a ransom
20 request.

21 THE WITNESS: The service bulletins are -- I
22 mean, many industries are doing them. The automotive
23 industry does it. Often FAA, aviation does it. It is a
24 way to get information out to the regulated entities
25 quickly when the regulator has identified something that

1 requires a little extra attention to it. And it's also
2 a way for the regulator to remind the regulated entity
3 of something that the agency thinks is important.

4 So PHMSA does issue these bulletins from time to
5 time. Sometimes it's to remind the operator of the
6 pipeline -- and operator means the people running the
7 pipeline -- or sometimes it's to say "Look, we just
8 learned something from another inspection" or "We've
9 done five inspections and have found confusion on
10 compliance in this area so let us -- let us clear this
11 up for everybody." It's an important educational tool.

12 COMMISSIONER HAUGEN-HOFFART: Uh-huh. Are you
13 aware that an advisory was issued on Thursday, June 2nd,
14 2022? Have you read that one?

15 THE WITNESS: I may -- I may have. I don't know
16 by the date. I probably read it but --

17 COMMISSIONER HAUGEN-HOFFART: And it has to do
18 with climate change, whether it impacts on liquid
19 pipelines. So it would be the responsibility of -- in
20 your opinion for Summit to look at that advisory at this
21 point in time and take into consideration what PHMSA is
22 saying regarding that?

23 THE WITNESS: I would agree with that. It --
24 yes. And service advisories don't extend -- they're not
25 rulemakings.

1 COMMISSIONER HAUGEN-HOFFART: Right.

2 THE WITNESS: They don't create a rulemaking.
3 You know, people get in trouble for rulemaking through
4 interpretive comments, right?

5 But, yeah, it is something that the operators
6 would be responsible for looking at. Absolutely.

7 COMMISSIONER HAUGEN-HOFFART: Okay. And just a
8 couple more. Can you explain for us the difference
9 between this pipeline is intra -- interstate.

10 THE WITNESS: Uh-huh.

11 COMMISSIONER HAUGEN-HOFFART: So PHMSA has
12 jurisdiction over it; correct?

13 THE WITNESS: Yes.

14 COMMISSIONER HAUGEN-HOFFART: And if it was just
15 intrastate, only within the state of North Dakota, the
16 PSC would have jurisdiction over it for pipeline safety.
17 However, we fall under PHMSA's rules and we get audited
18 by PHMSA on our pipeline safety program; is that
19 correct?

20 THE WITNESS: Yes, that's correct. And for
21 being in that program -- you know, if you didn't have a
22 program at all, PHMSA would even do the intrastate
23 portion.

24 But if I can flip to something I did print out
25 on PHMSA's state program pipeline safety grants, during

1 the reauthorization of 2006, we upped the reimbursable
2 cost to 75 percent from 50 percent for the states. And
3 I think North Dakota, 70 percent of your -- well, that's
4 gas. 70 percent of your gas and -- yeah, just gas is
5 covered by the program. I would love for North Dakota
6 and all states to be also agents on the liquid side as
7 well because there's more money available for that.

8 COMMISSIONER HAUGEN-HOFFART: I'm going to take
9 a moment to brag about our pipeline safety program
10 portfolio which I'm responsible for. On our last PHMSA
11 review, our pipeline safety program received a
12 99 percent out of 100. So we're working very hard on
13 our pipeline safety. And maybe that's something our
14 unit can consider on expanding. At this time we're
15 doing a very great -- I'm very proud of our staff on our
16 pipeline inter- -- intrastate program.

17 THE WITNESS: That's an outstanding score. You
18 should be congratulated. Well done, yes.

19 COMMISSIONER HAUGEN-HOFFART: I'll congratulate
20 my staff.

21 THE WITNESS: Staff, yes.

22 COMMISSIONER HAUGEN-HOFFART: I have no further
23 questions.

24 ALJ HOGAN: Mr. Dawson.

25 SUBSTITUTE DECISIONMAKER DAWSON: I have no

1 questions for this witness.

2 ALJ HOGAN: All right. Thank you.

3 Mr. Bender, any redirect?

4 MR. BENDER: No redirect.

5 ALJ HOGAN: Mr. Pelham, any additional
6 questions?

7 MR. PELHAM: No, Your Honor.

8 ALJ HOGAN: Mr. Bakke?

9 MR. BAKKE: No, Your Honor.

10 ALJ HOGAN: Mr. Leibel?

11 MR. LEIBEL: No, Your Honor.

12 ALJ HOGAN: All right. And Mr. Pranis?

13 MR. PRANIS: No, Your Honor.

14 ALJ HOGAN: All right. Well, thank you,
15 Mr. McCown. Those are all the questions for you.

16 THE WITNESS: Thank you, Your Honor.
17 Commissioners, thank you.

18 ALJ HOGAN: Looks like it's about 3:30. I think
19 we'll take our afternoon break and we will take a
20 ten-minute break and reconvene at 3:40.

21 (Recess)

22 ALJ HOGAN: All right. We are going to try to
23 get started again if everybody can please take their
24 seats. Are we good up there? All right. We're going
25 to get started again.

1 And just to update everybody here about the
2 procedure we're going to follow for the remainder of the
3 hearing, we're going to continue with Summit's
4 witnesses, and at the conclusion of Summit's witness
5 testimony we're going to switch the order and we're
6 going to move to public testimony because I know there's
7 lots of people that came today that wish to provide
8 public testimony and we want to make sure we get that
9 done today. So we're going to do public testimony
10 second, and then only if we have time will we move to
11 witnesses from the intervenors. And if we run out of
12 time, the Commission will need to schedule another date
13 to conclude the rest of that testimony.

14 So with that -- also, just another quick
15 reminder, if everybody could please check their cell
16 phones to make sure your cell phones are either silenced
17 or turned off. I've noticed that there have been
18 several that have gone off today and that is somewhat
19 disrupting for our hearing. So I appreciate that if you
20 could just double-check.

21 Mr. Bender, do you want to call your next
22 witness?

23 MR. BENDER: Yes. Thank you, Your Honor. Erik
24 Schovanec.

25 ALJ HOGAN: First, I'm going ask if you can turn

1 your microphone on. Thank you. And I'll have you start
2 by stating your full name and spelling your last name
3 for the record.

4 ERIK SCHOVANEC: Sure. So Erik Schovanec. The
5 last name is spelled S-C-H-O-V-A-N-E-C.

6 ALJ HOGAN: Can you repeat what came after the
7 A? I missed it with the microphone there.

8 ERIK SCHOVANEC: S-C-H-O-V-A-N-E-C.

9 ALJ HOGAN: Thank you. And were you in the room
10 this morning when I went through the penalties for
11 perjury?

12 ERIK SCHOVANEC: I was in another room but I was
13 watching the proceedings and I heard what was said.

14 ALJ HOGAN: Okay. Well, I'm just going to run
15 through them since you weren't in the room.

16 ERIK SCHOVANEC: Sure.

17 ALJ HOGAN: Perjury in North Dakota is a Class C
18 felony, punishable by a maximum fine of \$10,000, a
19 maximum five years' imprisonment, or both.

20 Do you understand what perjury is?

21 ERIK SCHOVANEC: Yes.

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

25 ERIK SCHOVANEC: I do.

1 ALJ HOGAN: All right. Thank you.

2 Go ahead, Mr. Bender.

3 ERIK SCHOVANEC,

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

6 DIRECT EXAMINATION

7 BY MR. BENDER:

8 Q. Erik, by whom are you employed?

9 A. Summit Carbon Solutions.

10 Q. What capacity?

11 A. I am the senior director of pipeline and
12 facilities.

13 Q. And can you briefly describe for us your
14 educational background and work experience?

15 A. Sure. So I have a bachelor of science in
16 mechanical engineering from Oklahoma State University.
17 Generally, the last 12 years of my career I've spent
18 designing, constructing, starting up, and operating
19 hazardous liquid pipelines. I've, you know, functioned
20 and served as a project engineer, project manager,
21 construction manager, engineering manager, as well as a
22 director of engineering.

23 I've worked on projects of different commodity
24 types. I've worked on projects of over 16 different
25 commodity types, six of which are HVLs, which are very

1 similar to the project here we're discussing. I've
2 either personally managed or overseen the management of
3 nearly 3,000 miles of pipe being installed. And I've
4 started up and commissioned over 50 pipelines and
5 pipeline facilities.

6 Q. And have you worked for some companies that
7 operate pipelines in the state of North Dakota?

8 A. I have. I've worked for Hiland Partners as well
9 as Kinder Morgan, and I have completed pipeline projects
10 for both companies within the state of North Dakota.

11 Q. And what has your role been with respect to the
12 project that's before the Commission today?

13 A. Generally, I'm responsible for the safe
14 construction -- design, construction, and startup of our
15 CO2 pipeline system and pipeline facilities.

16 Q. Okay. Let's talk a little bit about the
17 engineering and operational design of this pipeline.
18 Can you describe for us the right of way that will be
19 required to construct this pipeline?

20 A. Certainly. So we'll be seeking a 50-foot wide
21 permanent easement. We will need additional work space
22 to construct the pipeline. We call that generally our
23 temporary work space. The overall construction easement
24 width is anywhere from 100 to 110 feet wide depending on
25 the diameter of the pipe. There are locations where we

1 will need to net down the pipeline in, you know, for
2 example, wetland locations, you know, HDD drill paths,
3 and then there are also additional locations where we
4 may need additional temporary work space to construct
5 the pipeline such as, you know, road crossings and HDD
6 bore boxes, etcetera.

7 Q. Let's talk a little bit more in terms other than
8 just the right of way. Will Summit need to construct
9 any roads if this application is granted?

10 A. We will. We will need both temporary and
11 permanent access roads to safely build this pipeline.
12 Generally, the temporary access roads are required where
13 we cannot access the right of way through existing
14 county roads, township roads, etcetera. Those are, you
15 know, installed with the intent of restoring and
16 removing those at the tail end of construction. The
17 permanent access roads will be needed for construction
18 and will stay in effect into operation and will
19 generally, you know, go to main line valves, launch and
20 receiver sites, as well as our four pump stations.

21 Q. Provide us with some information on the diameter
22 of the pipe and some of the operating parameters?

23 A. So the diameter of the pipe in North Dakota
24 ranges from 4-inch to 24-inch. We have a 24-inch main
25 line, there's a 12-inch trunkline, as I would call it,

1 and then there's two laterals, one of which is 4-inch
2 and one is 8-inch.

3 The pipeline will be constructed of high grade
4 carbon steel built to the API 5L specification. The
5 wall thickness will range anywhere from .189 to .750.

6 The operating temperature will -- the maximum
7 operating temperature will be 120 degrees Fahrenheit.
8 The maximum operating pressure will be 2,183 psig. The
9 typical pressures that we'll operate the pipeline will
10 be anywhere from 1,200 to generally 2,150 psig depending
11 on the hydraulics of the pipeline.

12 And then the throughput that we currently have
13 committed is roughly 9 million tons per annum. And then
14 the pipeline is being designed for a maximum throughput
15 of 18 million tons per annum.

16 Q. What surface facilities will be installed on the
17 pipeline?

18 A. So we will have main line valves which have
19 been, you know, discussed, you know, extensively with
20 some of the previous witnesses. We will have
21 launcher/receivers to launch both maintenance pigs and
22 in-line inspection tools. And then we will have four
23 pump stations along our pipeline route.

24 Q. Please briefly explain what the construction
25 process is if this application is granted?

1 A. So our pipeline construction process will be
2 very typical for linear pipeline construction. I'll try
3 to give a brief overview of that. I'm happy to dive
4 into additional details as required.

5 Generally, we will take the right of way to make
6 sure the contractors are working within the extents of
7 the right of way. We will complete a one call. We will
8 complete line locates. And we will daylight and pothole
9 every single foreign line to make sure that we know
10 exactly the location, the depth, and the size of every
11 foreign utility.

12 After those activities are completed, we'll
13 start our construction process, which will generally
14 start with clearing activities, which is removal of
15 trees, shrubs, things of that nature. And then we will
16 strip the topsoil and grade the right of way, being very
17 careful to separate the topsoil and the subsoil. We
18 will place the topsoil at the edge of the right of way.
19 We will make sure that we stabilize the topsoil and that
20 we will leave gaps in the topsoil to allow farming
21 operations and for farmers to, you know, receive -- or
22 to traverse from both sides of the right of way.

23 Following the grading activities, we will then
24 string the pipe, which is placing the pipe joints along
25 the right of way. We will bend the pipe, we will line

1 the pipe up, and then we will weld the pipe together.
2 We will X-ray a hundred percent of the welds and then
3 coat those welds.

4 After those activities are complete, we will
5 then cut our trench generally using ditch machines.
6 When we cut the trench, we will also have drain tile
7 contractors available to make immediate temporary
8 repairs to drain tile if required. We will then lower
9 in the pipe into the trench. We will complete permanent
10 drain tile repairs.

11 We will then backfill the ditch, placing the
12 subsoil in first, followed by the topsoil, and then
13 generally we will restore the right of way, placing the
14 topsoil back, making sure that we decompact and rip the
15 subsoil prior to doing those activities.

16 We will then fill the pipeline with water. We
17 will hydro test the pipeline to 125 percent of the max
18 operating pressure and hold that for eight hours. We
19 will then dewater and clean and dry the pipeline to a
20 very low dew point that is sufficient to prevent
21 moisture from accumulating in the pipe. And then we
22 will either introduce CO2 into the pipeline at that
23 point following checkouts with the control center or we
24 will essentially put a very small amount of nitrogen or
25 another inert gas in the pipeline until the CO2 is

1 introduced to prevent any kind of corrosion.

2 Q. And what contract personnel or contractor
3 personnel will be involved in the construction and
4 oversight of the project?

5 A. So Jimmy mentioned this earlier, or Mr. Powell.
6 We have two contractors that we are planning to use in
7 the state of North Dakota. One contractor will be
8 constructing the 24-inch main line and then another
9 contractor is going to be building the lateral system in
10 eastern North Dakota. Both of those contractors are
11 very highly competent. Both have installed thousands of
12 miles of pipe over the last several years and both have
13 very good safety records.

14 Generally, the personnel that will be used to
15 build the pipeline are welders, pipefitters, heavy
16 machinery operators, truck drivers, laborers, etcetera.

17 We will then also have inspection staff. Those
18 are third-party experts that are on our staff that will
19 oversee the installation of the pipeline. Generally,
20 those will be certified welding inspectors, coating
21 inspectors, agricultural, environmental experts, safety
22 inspection, and utility inspectors that will cover other
23 activities and construction activities on the pipeline.

24 Q. Erik, with respect to safety, what steps is
25 Summit going to take to ensure that the pipeline is

1 constructed in a safe manner?

2 A. So safety is obviously extremely important to
3 us. We've onboarded a full-time safety manager and he's
4 currently standing up a contractor safety program which
5 will be very prescriptive as to the things that the
6 contractors can or can't do while working for Summit.
7 It also, you know, outlines the safety statistics and
8 things that they -- you know, thresholds that must be
9 met for them to work for us.

10 We anticipate having full-time safety inspection
11 on the right of way during construction. We expect our
12 contractors to have full-time safety representatives
13 during the construction process. And we will have an
14 onboarding process to make sure that all personnel that
15 work on our pipeline are trained in safety.

16 Q. And how will Summit keep landowners informed
17 during the construction process as to when Summit is
18 going to be moving on a piece of property, when they'll
19 be moving off, that sort of thing?

20 A. So we generally have our right of way agents be
21 our liaison with the landowners considering that those
22 land agents have been presumably working with those
23 landowners for some time now. We plan to keep land
24 agents on through construction and post construction.
25 So generally the right of way agent will be the point of

1 contact.

2 We will make notifications either through
3 letters or otherwise as required by the PSC. And then,
4 you know, construction management, project management,
5 and others, including myself, will be available as
6 required to address issues.

7 Q. I'd like to shift gears here just a little bit
8 and talk about operation and maintenance of the
9 pipeline. Can you provide some information to the
10 commissioners relative to protecting the -- protecting
11 the pipeline from damages both during construction and
12 operation?

13 A. Certainly. I would state that we have layers
14 and layers and layers of protections in place and plan
15 to have those in place. To me, it starts with the pipe.
16 You know, we have high grade domestically-sourced carbon
17 steel pipe which will have fusion bonded epoxy coating
18 on the outside to prevent corrosion. We will have ARO
19 coating for drills to prevent any damage during that
20 process. We're employing additional design factors for
21 road bores for drills.

22 We're X-raying a hundred percent of the welds
23 even though that's only required to X-ray 10 percent.
24 On top of that, we will actually have a level three
25 technician who's going to oversee the welding -- or the

1 inspection process for the welds. So those are some of
2 the things that are being done on the pipe side.

3 You know, generally the pipeline depth to us is
4 a protection that's being employed. We're going to
5 pretest all major HDDs, which means that we will
6 essentially pressure test any drill before it's pulled
7 in to make sure that the integrity of the pipe is there,
8 and then we'll obviously hydro test the entire pipeline
9 system when it's continuously built.

10 We will have pipeline markers that are placed at
11 the roads and at other locations so that the public
12 knows exactly where the pipeline is located. We will
13 provide as-built surveys to every landowner that we
14 cross that shows the exact location on their property
15 where our pipeline is located.

16 We will have, you know, damage prevention
17 program in place when we go into service. We will have
18 full-time integrity engineers on the staff. We will
19 have an integrity management plan. We're complying with
20 everything that's required by PHMSA and 49 CFR 195, but
21 we're obviously doing a number of different things that
22 are not required by PHMSA.

23 Those are just some of the things. I'm sure
24 there's more, but those are generally the things that I
25 can think of right now.

1 Q. Tell us a little bit, there was a question
2 earlier by one of the commissioners about aerial
3 patrols. What will you be doing in that regard?

4 A. So as required by PHMSA, we will be completing
5 aerial patrols, which is generally flying the pipeline
6 26 times a year with a duration no longer than three
7 weeks.

8 Q. And will you be doing in-line inspections as
9 well?

10 A. Correct.

11 Q. Tell us about those.

12 A. And a couple other things that I just recalled
13 that I did miss. So we will be running a caliper tool
14 upon completion of the construction and before we
15 complete our commissioning activities. So that's a tool
16 that's run through the pipeline that looks for dents,
17 deformation, ovality type issues, wall thickness issues,
18 any kind of issues like that would be identified and
19 repaired or addressed ahead of, you know, commissioning.
20 And then we're also running a DCVG which is essentially
21 a way to verify the -- that the coating of the pipeline
22 is intact after the backfill process is complete.

23 You know, back to your original question, we
24 will be running in-line inspection tools as required by
25 PHMSA every five years generally.

1 MR. BENDER: No further questions, Your Honor.

2 ALJ HOGAN: All right. Thank you.

3 Mr. Pelham, any questions?

4 MR. PELHAM: Thank you.

5 CROSS EXAMINATION

6 BY MR. PELHAM:

7 Q. Mr. Schovanec, were you going to -- were you the
8 witness that was going to talk about the easement
9 percentages or is that someone else?

10 A. No, sir.

11 Q. Okay. Fair enough.

12 As far as the placement of the major equipment
13 and pumps, the application indicates shelters will be
14 used. Can you expound on that? What do the shelters
15 look like?

16 A. So generally the shelters will be structural
17 steel and they will be insulated metal buildings with
18 rollup doors which will be there for accessing the pumps
19 and maintenance activities. There will also be man
20 doors. The buildings are being designed to STC 36,
21 which is essentially a way to insulate the pipeline for
22 acoustical reasons.

23 There was a question, you know, previously
24 asked, and I'll address it now, but -- so the four pump
25 stations, the locations of those, from what we've looked

1 at, we are generally at one-half of a mile up to nearly
2 a mile in distance from any residence. We've completed
3 a noise analysis, and that noise analysis has shown that
4 anywhere from 500 feet from the pump shelters we're
5 seeing decibel levels anywhere from 20 to 43. And then
6 a thousand foot from the pump shelters we expect to see
7 decibel levels anywhere from 17 to 37. And just for
8 reference, you know, 30 to 50 decibels is generally the
9 equivalent to background noise or, you know, suburban
10 living, essentially.

11 Q. Any issue for the company in providing those
12 noise studies to the Commission?

13 A. We have no issues providing those.

14 Q. As far as -- we've heard something about
15 reroutes. And do you have -- have there been reroutes
16 on the line since the application has been filed?

17 A. So I'm generally aware that there are three
18 reroutes which are outside of the corridor for over one
19 and a half miles. They're not implemented into our
20 active route. I would say that they're under
21 consideration. And I would also state that we will make
22 a determination on those over the coming weeks and then
23 we will notify the PSC immediately once we do make those
24 determinations.

25 Q. Can you share at least where -- what counties

1 those are located in?

2 A. I believe that there's one in Oliver, one in
3 Burleigh, and I believe it's -- the third one may be in
4 Emmons County. I'm not sure on that one. I know it's
5 on the main line 24-inch pipe.

6 Q. And are there three separate reasons for those
7 potential reroutes?

8 A. I would say that they are being considered for
9 different reasons. Some of them were driven by
10 landowner request on the route, which we try to
11 accommodate where we can. Some were driven based off of
12 cultural and heritage surveys that were conducted. And
13 some were considered for other constructibility reasons.
14 So generally those three reasons would be why the route
15 was adjusted on those locations.

16 Q. The Environmental Construction Plan that was
17 submitted as Appendix 3 in the application, I note it
18 was in draft. Do you know when there will be a final
19 version of that?

20 A. I do not know the exact timeline. I would say
21 that even though it is classified as a draft, it is very
22 near its final form. You know, I can be prepared to
23 speak to that in the next hearing on whether that will
24 be final. The expectation certainly is that that's
25 finalized over the coming weeks and certainly well

1 before the hearings conclude.

2 MR. PELHAM: Mr. Schovanec, I don't have any
3 other questions for you. Mr. Schock may have some.

4 CROSS EXAMINATION

5 BY MR. SCHOCK:

6 Q. Are you the correct witness to speak to how deep
7 you plan to bore underneath the Missouri River?

8 A. Yes, sir, I am. So I'm -- I'm generally aware
9 that the pipeline current design of crossing -- the HDD
10 design crossing the Missouri River is at a minimum
11 49 feet below the base of the river. We've conducted
12 actual surveys to survey the depth where surveyors went
13 out on a boat and surveyed the depth of the pipeline --
14 or the depth of the Missouri River. So generally the
15 depth is 49 feet at a minimum and it's well over 70 feet
16 in some locations.

17 Q. Okay.

18 A. We've also conducted a site specific scour
19 analysis and lateral migration analysis to see how that
20 may be impacted over long term, and we have, you know,
21 no issues and see no long-term issues with scour based
22 on the depth of our pipeline.

23 Q. Okay. Thank you.

24 Winter construction. So there was a little bit
25 of discussion earlier on that if land -- if you plan to

1 do winter construction, you would plan to remove topsoil
2 before the winter season. Is the company willing to
3 comply with, I believe it's Interstate Natural Gas
4 Association of America guidelines for pipeline
5 construction during frozen conditions, is generally the
6 document that this Commission has referenced if there's
7 going to be wintertime construction? Would the company
8 be agreeable to complying with those requirements if it
9 were to desire to remove topsoil during the wintertime?
10 I'm sorry, maybe a better clarification. After the
11 topsoil is already frozen?

12 A. So generally we do not plan to strip any topsoil
13 outside of those months where we're generally starting
14 -- planning to work anywhere from April to late November
15 or essentially when the topsoil freezes.

16 I'm not aware of those specific requirements
17 that you reference, however, you know, will gladly
18 review those and I can comment on whether or not we
19 would be able to comply with those. But generally we
20 are not planning for any winter construction at this
21 time.

22 Q. Okay. So after the topsoil is removed and you
23 kind of do the remaining pipe work and things like that
24 that you can do during the winter, what other activities
25 would you be out there doing until the -- kind of the

1 thaw in the springtime?

2 A. I would say generally that there will be very
3 few activities that take place in those winter months.
4 You know, there could be some staging activities. Some
5 could be some drills that are continuing to take place.
6 There could be some of those sorts of activities. But
7 as it stands today, we have no intention of completing
8 really any major construction during those winter
9 months.

10 Q. Okay. And then to the extent that you would
11 have a section of the pipeline dug, you know, the actual
12 hole dug in the ground, would you do some kind of
13 damming or shoring of those segments just to account for
14 the springtime runoff that would occur in North Dakota?

15 A. I'm not sure I quite understand the question.
16 Can you rephrase that, please?

17 Q. Sure. So if prior to the freeze-up you dig a
18 significantly sized trench, you know, five, ten miles
19 long, and then that's as far as you're able to get in
20 that winter, would you, as part of that plan, plan to
21 have some sort of water dams within that trench to kind
22 of limit the erosion and spring runoff impact to the
23 topsoil and subsoil for that matter?

24 A. I would state that we generally are planning to
25 only cut the ditch and get the pipe in the ground that

1 -- you know, we don't intend to leave any open ditch.
2 We don't intend to leave, you know, miles of pipe strung
3 along the right of way. We generally want to get all of
4 the pipe in the ground and then backfilled and then
5 we'll shut down any kind of construction activities for
6 that season and come back. So we don't anticipate that
7 happening, but if that did happen, we would have some
8 sort of plan to mitigate issues there.

9 Q. Thank you.

10 MR. SCHOCK: That's all the questions I have.
11 Thank you.

12 ALJ HOGAN: All right. Thank you.

13 Mr. Bakke, any questions?

14 MR. BAKKE: Yes, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BAKKE:

17 Q. First of all, in regard to these routing
18 changes, I heard you testify that Summit is in the
19 process of rerouting per a landowner's request, was one
20 reason; correct?

21 A. We have accommodated a few landowners with
22 requests where we adjust the pipeline route on their
23 property within reason.

24 Q. But not off of their property?

25 A. Generally, we will make slight adjustments for

1 the route on a given landowner's property. We are not
2 agreeing to, you know, get off of that property onto
3 another landowner's property at their request, no.

4 Q. So there have been requests by a number of
5 landowners that the pipeline not go on their property;
6 correct?

7 A. I would state that that is correct, that there
8 are landowners that have asked that we get off of their
9 properties.

10 Q. And have refused to agree to have the pipeline
11 installed there?

12 A. We have had really good success buying right of
13 way. We have not bought all of it yet but we will
14 continue to have discussions with landowners today and
15 indefinitely until we can get easements signed.

16 Q. Has Summit kept track, in terms of the easements
17 they've obtained, on how many of those easements are
18 from property owners who actually live or use the land
19 themselves?

20 A. I'm not sure that those metrics are being
21 tracked.

22 Q. Okay. Because you are aware, I assume, there's
23 many absentee owners who may have a family property and
24 they live out of state and lease out the property
25 anyway; correct?

1 A. Yep. Absolutely.

2 Q. Okay. You haven't kept track and can't tell the
3 Commission how many of the people that you've obtained
4 easements from are people who actually live there, use
5 that land, work that land?

6 A. I have not specifically tracked the quantity of
7 absentee landowners, no.

8 Q. Are you aware there's been a number of routing
9 changes in relation to where the pipeline was supposed
10 to go according to Summit from -- starting in 2021 to
11 the present?

12 A. I'm generally aware that there have been
13 numerous route changes made to the pipeline from
14 inception to today, yes.

15 Q. Okay. And I'm talking specifically about
16 Burleigh County. How many changes have been in the
17 route in -- proposed route by Summit in Burleigh County?

18 A. I'm not aware of those exact figures.

19 Q. Who would be aware of those exact figures? Who
20 would know about these multiple route changes in
21 Burleigh County by Summit over time?

22 A. We can certainly get those figured out. I just
23 don't have those here with me today. I wasn't prepared
24 to have the exact quantity of micro changes made in any
25 given county.

1 Q. Were you involved in the decision in regards to
2 moving the route of the pipeline in Burleigh County?

3 A. I certainly was involved with the decision to
4 adjust the pipeline in Burleigh County, yes.

5 Q. Okay. And who else was involved in that
6 process?

7 A. I would say that, you know, we've got a route
8 variance process where any route variance is diligently
9 reviewed by construction representatives, environmental
10 representatives, engineering representatives, and land
11 representatives. So every single route variance that
12 occurs on the pipeline goes through our diligent review
13 process, and that certainly was an exception for that
14 one.

15 Q. And who is the decisionmaker or decisionmakers
16 from Summit as to whether or not the route can change in
17 Burleigh County?

18 A. I would state that there are different, you
19 know, thresholds for route variances with different
20 levels of approval. You know, there are small route
21 variances which I certainly can approve. And there are
22 obviously very large route variances that have to have
23 additional approval such as Mr. Powell.

24 Q. Okay. Is Mr. Powell the ultimate decisionmaker?

25 A. I would state that Mr. Powell is our COO. He is

1 not the CEO or the sole decisionmaker for Summit Carbon,
2 no.

3 Q. Okay. So Mr. Powell and the CEO, are they the
4 ultimate decisionmakers on more major route changes on
5 the Summit pipeline?

6 A. We have a board of directors. I believe that
7 they have a say in those types of decisions as well. So
8 I would say that there are several different people
9 involved in those types of decisions.

10 Q. I notice you mention that you worked at both
11 Hilands and Kinder Morgan, which are both, according to
12 Mr. Powell's testimony, organizations he previously
13 worked for. Is that your understanding?

14 A. I believe that, yes, Mr. Powell has worked at
15 Hiland Partners and Kinder Morgan.

16 Q. Okay. And did you work with Mr. Powell in those
17 companies?

18 A. I worked not directly for Mr. Powell. However,
19 he was our chief operating officer at Hiland Partners.
20 I was a senior project manager installing pipelines and
21 pump station facilities. We were then acquired by
22 Kinder Morgan. You know, Jimmy had mentioned that he
23 was over operations for a period of time and he was over
24 project management for a period of time. So when he was
25 over the project management functions and the products

1 pipeline group at Kinder Morgan, I reported to a
2 director of engineering that reported up through Mr.
3 Powell.

4 Q. Okay. Have you ever designed a CO2 pipeline
5 before?

6 A. I have not specifically designed CO2. However,
7 I've worked, as you may have heard earlier, on pipelines
8 of, you know, various commodity types. 16 overall that
9 I can recall. Over a dozen hazardous liquid commodities
10 and a half dozen HVLs, or highly volatile liquids. In
11 my experience, all of these hazardous liquid pipelines
12 fall under 49 CFR 195 which dictates the design,
13 construction, and operation of a hazardous liquid
14 pipeline. I would say that I have a vast amount of
15 experience in that capacity.

16 Q. Have you ever constructed a CO2 pipeline before?

17 A. I have not constructed a CO2 pipeline. However,
18 I have been a part of the construction of over
19 2,700 miles of new greenfield hazardous liquid
20 pipelines.

21 Q. And have you ever operated a CO2 pipeline
22 before?

23 A. I have not operated -- I've not functioned in an
24 operations role at any capacity. So I can't say that
25 I've operated any hazardous liquid pipelines.

1 Q. Are you aware of the route that the pipeline
2 takes to the west of Sioux Falls and to the west of
3 Aberdeen, South Dakota?

4 A. I'm aware of the route around Sioux Falls and
5 Aberdeen.

6 Q. Can you explain to the PSC why it is that Summit
7 decided to route the pipeline six to seven miles west of
8 Sioux Falls but instead, in Burleigh County, is
9 requesting to route it within a mile or two of Bismarck?

10 A. So those statistics are incorrect. I will
11 correct you. So the closest that we are to the city
12 limits of Sioux Falls is actually 5.1 miles. The
13 closest that we are to the city limits of Bismarck is
14 nearly four and a half miles to five miles on average.
15 So I would say that those are generally being handled
16 very similarly between Sioux Falls and Bismarck.

17 Q. And I'm going to show you a map that shows the
18 location of the Silver Ranch development on a map, and
19 I'd ask you, in the binder to your right, to look at
20 Exhibit 139. Do you have that available to you?

21 A. Yes, I do. I'm looking at Exhibit 139, I
22 believe.

23 Q. And do you see where Silver Ranch is designated
24 there and is circled in blue?

25 A. I do see that.

1 Q. Okay. And is it your testimony this map, which
2 shows the sections, shows 4.5 miles from the eastern
3 edge of Silver Ranch and the western edge of the
4 pipeline route?

5 A. I can't make that determination based off of
6 this map.

7 Q. Well, you can see the sections, can't you, in
8 the black?

9 A. I can see a scale at the bottom of the page and
10 generally I can see that this blue circle, which I can't
11 say has been defined exactly what that is. It looks
12 like a hand-drawn circle on a map.

13 Q. It is.

14 A. It looks like the hand-drawn circle is
15 approximately four miles from the pipeline route shown
16 here which, again, I can't verify a hundred percent that
17 this is the sited route.

18 Q. Actually, according to this map, it's less than
19 two miles. Why do you say it's over four miles?

20 A. Well, I was looking at the scale at the bottom
21 of the page, and generally it appears that it's, you
22 know, well over two miles and closer to four miles.
23 Again, I can't make that determination without, you
24 know, having more time and, you know, quite frankly,
25 some tools to analyze this map.

1 Q. Well, can you see how far -- you see the
2 Heritage Reserve property on there, the development
3 there?

4 A. I see an arrow that points to a location.

5 Q. Sure.

6 A. Says Heritage Reserve.

7 Q. And then just south of Heritage Reserve is the
8 extraterritorial limits of Bismarck. Is that your
9 understanding?

10 A. My understanding is that our pipeline is
11 generally 1.1 miles to over three miles from the
12 extraterritorial jurisdiction of Bismarck.

13 Q. Okay. And if we look at this map, it shows in
14 the area of Heritage Reserve it's less than that?

15 A. I can't speak to that. All I can say is that,
16 in our analysis of the 24 -- 2045 development plans and
17 the extraterritorial jurisdiction, that our pipeline
18 route is currently sited 1.1 to 3 miles outside of that
19 development plan.

20 Q. And so have you ever gone out there and tried to
21 conduct a measurement or analysis yourself to see that
22 it's a little over 2,000 feet from the northern edge of
23 Heritage Reserve's land that they own?

24 A. No, I have not physically gone out to Heritage
25 Reserve to physically measure the distance from that

1 location to our sited pipeline location.

2 Q. Or driven it?

3 A. Have I driven this exact location? No, I have
4 not.

5 Q. And have you gone out to Silver Ranch to see how
6 far it is away from the eastern edge of Silver Ranch to
7 the proposed pipeline route?

8 A. I cannot say that I have.

9 Q. So what are you relying on for your
10 measurements? Have you driven any of this or measured
11 any of this yourself?

12 A. We've got a very sophisticated GIS program that
13 obviously has all of the streets, has all of the
14 locations, has tract numbers, has everything that's
15 shown in much more detail than what's shown here with
16 hand sketches and circles and arrows. So I can't say
17 that I trust anything that's shown here, but I do trust
18 that the pipeline route that we have in our GIS program
19 is very accurate.

20 Q. Well, if you look at Exhibit W140 in your
21 binder --

22 A. You said 140?

23 Q. 140. You see where Heritage Reserve is
24 identified on there?

25 A. I see that.

1 Q. Okay. Do you see where the proposed Summit
2 pipeline is to the north?

3 A. I see that. I also cannot confirm whether or
4 not, you know, the northern boundary of Heritage Reserve
5 is -- is truly the extent of the ETJ which --

6 Q. Well, whether it's within the ETJ or not, are
7 you aware there's in excess of a hundred homes built in
8 Heritage Reserve?

9 A. I'm aware of two pipelines, a natural gas
10 operated by DBI, a 10-inch refined products pipeline
11 operated by NuStar, and I'm also aware of hundreds if
12 not thousands of homes that are in close proximity as
13 well as over ten schools that are within hundreds of
14 feet, if not thousands of feet. I'm generally aware of
15 a high school that is less than a 150 feet from that
16 10-inch NuStar refined product pipeline that is
17 transporting, in my -- what I would say a much more
18 hazardous liquid that's both flammable and combustible.

19 So I can't state whether I know whether there's
20 houses in Heritage Reserve, but I can state that I know
21 that there are countless neighborhoods and countless
22 houses and schools within very close proximity to
23 hazardous liquid pipelines that are being operated
24 extremely safely.

25 Q. And when you say "hazardous utility pipelines,"

1 you're referring to natural gas?

2 A. Natural gas is the DBI pipeline. I'm aware of a
3 10-inch refined products pipeline which goes from the
4 Mandan Marathon refinery east to Fargo, so essentially
5 serving Fargo with diesel, gasoline, jet fuel. Not
6 serving Bismarck with those products, but it does run
7 right through the northern part of Bismarck and, in my
8 understanding, has been there much longer than the
9 development of the neighborhoods that have happened over
10 the last decades around the pipeline.

11 Q. Sure. And therein lies the difference. In that
12 case, the development came to -- closer to the refinery;
13 correct?

14 A. Can you rephrase that, please?

15 Q. Well, in that case, the one you just cited, you
16 agree at that time development that occurred around the
17 refinery was development where developers and homeowners
18 decided to build closer to the refinery pipeline;
19 correct?

20 A. The refined products pipeline had extensive
21 development that occurred around it after it was
22 constructed, yes.

23 Q. Okay. Whereas here, what Summit is requesting
24 from the PSC, is the opposite of that. They're trying
25 to go to areas that are already developed and say "We

1 want to put this pipeline in your backyard"; correct?

2 A. I disagree.

3 Q. Okay. And this pipeline, if we take natural
4 gas, I don't think anybody disputes there's natural gas
5 pipelines that run throughout the city because everybody
6 or almost everybody uses natural gas to heat their
7 homes; correct?

8 A. I would agree that generally people use natural
9 gas to heat their homes, yes.

10 Q. Sure. And it provides a benefit to them to have
11 that natural gas line close to their home, and in
12 virtually every case, they're going to have a smaller
13 gas line that runs to their home; correct?

14 A. Hazardous liquid pipelines are constructed to
15 benefit the general public, including the refined
16 products pipeline that's moving gasoline, diesel, and
17 jet fuel to cities outside of Bismarck. However, it
18 still traverses Bismarck.

19 Q. Sure. Versus this CO2 does not provide any
20 benefits to the residences that it's going to affect or
21 the landowners that it runs across because they're not
22 using that CO2 for any purpose, are they?

23 A. I disagree that it does not benefit anybody in
24 Burleigh County.

25 Q. Okay. So are the homeowners going to use this

1 CO2 for some purpose for their homes or land?

2 A. There's no intention of, you know, providing CO2
3 to individual landowners, no.

4 Q. Were you involved in determining the 20-mile
5 shut-off valve spacing?

6 A. I was not involved in determining PHMSA's rule
7 on valve spacing, no.

8 Q. Well, you say PHMSA's ruling. Summit can, in
9 fact, install shut-off valves more frequently than every
10 20 miles. PHMSA's not going to object to that, are
11 they?

12 A. I don't believe they would.

13 Q. Okay. The installers that you talked about who
14 are supposed to build this pipeline, is it Precision?
15 Is that one of them?

16 A. Precision Pipeline and Pumpco are current
17 contractors that we are planning in North Dakota.

18 Q. Okay. And does Precision Pipeline have any
19 experience in constructing CO2 pipelines?

20 MR. BENDER: Your Honor, we went through all
21 this with the testimony of Mr. Powell. I don't see much
22 purpose in asking the same questions of this witness.
23 He's going to get the same answers.

24 MR. BAKKE: And Mr. Powell didn't know for sure.
25 He said to ask this witness so that's why I'm asking.

1 A. I can't state for certain whether or not
2 Precision has built CO2 pipelines. I know that they've
3 constructed thousands of miles of pipe over the last
4 several years. I can confirm that our main line
5 contractor has installed 24-inch CO2 pipelines.

6 Q. Okay. And how about Panco (sic), have they
7 installed or constructed any CO2 pipelines?

8 A. Who did you mention?

9 Q. I think the company you said was Panco?

10 A. Pumpco.

11 Q. Pumpco.

12 A. So Pumpco, as I just stated, has installed
13 24-inch CO2 pipelines.

14 Q. You addressed in your testimony, in response to
15 Mr. Bender's questions, safety during construction but
16 not safety after the pipeline is, in fact, completed.
17 Is that your area of responsibility, is safety of the
18 pipeline after it's constructed and in operation?

19 A. I would state that the first part of your
20 question is incorrect. I stated multiple things that
21 involve safety post operation, including pipeline
22 markers, as-built surveys, aerial markers, in-line
23 inspection tools, damage prevention plans, full-time
24 damage prevention representatives. I would state that
25 my general responsibility is to construct and commission

1 the pipeline system and pipeline facilities. Operation
2 of the pipeline is not under my purview.

3 Q. Okay. And so, in fact, you told us you've never
4 been involved in operating a pipeline before during your
5 career; correct?

6 A. I have served in engineering, project management
7 roles. I have not served in an operations role, no.

8 Q. Okay. And so who's going to be in charge of
9 operations for Summit of the pipeline when it's
10 constructed?

11 A. Mr. Powell.

12 Q. You were asked some questions about the Missouri
13 River. Were you involved at all in trying to determine
14 what routes were available for the pipeline to cross the
15 river?

16 A. I was.

17 Q. Okay. And so what did you do to try to
18 determine what locations were possible locations for a
19 river crossing?

20 A. There are hundreds of inputs that go into the
21 routing of a pipeline. So, you know, the location of
22 the Missouri River crossing is obviously very critical.
23 So we analyzed, you know, multiple locations, you know,
24 several miles to the north and several miles to the
25 south of our current sited location.

1 There were numerous things that were taken into
2 consideration, all of which were weighted in our
3 decision. One of those is, you know, cultural and
4 heritage sites that may be, you know, found or were
5 found. We did extensive amounts of survey on both sides
6 of the river. You have constructibility of the river
7 and you've got scour and lateral migration
8 considerations. You also have, you know, easement
9 considerations.

10 So we've assessed all of those and we have
11 secured easements with landowners on both sides of the
12 Missouri River. And our current sited route, in our
13 estimation, is the most preferred route based on
14 weighting of all of those different factors.

15 Q. So you indicated the area that Summit analyzed
16 or looked at for the river crossing was several miles to
17 the north and several miles to the south of the current
18 proposed location?

19 A. Yes, I did state that we analyzed multiple
20 locations going several miles to the north and all
21 locations in that range and several miles to the south.

22 Q. Okay. And what is several miles?

23 A. I would say two and a half to three miles to the
24 north and two and a half to three miles to the south.

25 Q. So the area that Summit looked at was

1 essentially an area of about five to six miles all north
2 of Bismarck; correct?

3 A. That's incorrect.

4 Q. Okay. So where else did you look?

5 A. I would state that, you know, we looked in a
6 range of five to six miles for our preferred route that
7 was sited and, you know, refined through months of field
8 surveys and landowner discussions. The preliminary
9 route did take into consideration going south or north
10 of Bismarck.

11 Again, we analyzed numerous factors. There's
12 lots of sensitive, you know, locations there. There's
13 floodplains. You know, there are constructibility
14 concerns. And generally it wasn't any shorter for our
15 pipeline route to go south or north.

16 So for all of those considerations, our
17 preferred route was to the north, and that's the route
18 that we plan to permit to construct.

19 Q. So Summit determined it wouldn't be any shorter
20 of a route to go south of Bismarck than north of
21 Bismarck?

22 A. The determination to go north of Bismarck was
23 made very early on in the process. That hasn't been
24 considered for more than a year at this point.

25 Q. Okay. And that wasn't my question. I was

1 following up on your comment where I thought you said
2 that Summit determined it wouldn't be any shorter or
3 longer whether Summit went south of Bismarck with the
4 pipe or whether it went north. Isn't that what you
5 said?

6 A. So generally the pipeline length is a
7 determining factor in the route of the pipeline. It's
8 one of the many considerations. So we looked at a south
9 option and a north option very early on in the process,
10 and it was very quickly determined that the more
11 preferred route was to go to the north of Bismarck.

12 Q. Well, preferred by Summit; correct?

13 A. Preferred for various reasons. And, again,
14 we've got, you know, an expert witness that can speak to
15 some of the different sensitive areas that are avoided
16 to the south. Certainly no route is perfect. You have
17 to weigh lots of different factors when routing a
18 pipeline. And we made that determination to site our
19 pipeline where it is. And its current location is after
20 exhaustive amounts of iterations, refinements, subject
21 matter reviews, regulatory agency consultations, and
22 data sets that we've received from Fish and Wildlife,
23 and consultations with the Corps of Engineers.

24 So there's a lot of things that go into the
25 siting of the route. The location and the current

1 location of the crossing of the Missouri River was
2 generally agreed to as a good location by the Army Corps
3 of Engineers. We've got a Section 408 permit that we've
4 submitted with them in that exact location.

5 Q. Okay. And my question related to your comment
6 about what you called the preferred route. When you say
7 it was the preferred route, the preferred route by
8 Summit; correct?

9 A. I wouldn't say that's correct.

10 Q. Well, who else preferred that route other than
11 Summit?

12 A. There's a lot of things that go into the route
13 of the pipeline. You know, our preferred route is a
14 straight line. Obviously, we can't do that. So there's
15 a lot of different things that go into routing the
16 pipeline. I've named them off, you know, numerous times
17 here. So I would say that's the current sited route as
18 it stands today.

19 Q. Okay. And I'm just trying to get you to answer
20 my question. Who else determined this was the preferred
21 route other than Summit?

22 A. It is the current pipeline route. It is the
23 preferred location of crossing the Missouri River.
24 Generally, our sequestration facilities are due west.
25 We need to, you know, deliver CO2 to those locations so

1 we need to ultimately cross the river and build a
2 pipeline to our sequestration facilities in Oliver and
3 Mercer County.

4 Q. So can you tell me anyone other than Summit who
5 determined this was the preferred route?

6 A. I don't understand what you mean by "preferred
7 route." It's the current sited route. It was the
8 preferred route. It's the current route. Would it be
9 our original preferred route? No. But it is our
10 current sited route with a preferred crossing location
11 for numerous reasons of the Missouri River.

12 Q. You're the one that used that phrase, not me.
13 You called it the preferred route. Is there anybody
14 else who said this is the preferred route other than
15 Summit?

16 A. If you want to call it the preferred route, then
17 we can call it that. But generally all the things that
18 I've listed go into the routing of a pipeline, you know.
19 And, again, our most preferred route is a straight line
20 so I would say that this is not our preferred route but
21 it is our current sited route based on all the factors
22 that go into routing a pipeline.

23 Q. Well, you said that you analyzed two and a half
24 to three miles south of the current location. If you
25 went two and a half to three miles south of the current

1 location, you'd be in the city of Bismarck, wouldn't
2 you?

3 A. I would have to look at that directly to see if
4 that entered city limits or not. I would say it
5 probably does not.

6 Q. Well, certainly it would be within the
7 extraterritorial limits of the city, wouldn't it?

8 A. I can't answer that question either. I'd have
9 to look at that.

10 Q. I mean, assuming it's within the
11 extraterritorial limits of the city of Bismarck, or in
12 places, perhaps, in the city limits, Summit merely
13 looked at an area of about three to three and a half
14 miles in trying to determine where to place this
15 pipeline to cross the Missouri River, according to --

16 A. That's incorrect. I would state that I can't
17 verify if that most-southern location that we
18 investigated and ultimately decided was not the best
19 location is or is not inside of the 2045 development
20 plans.

21 Q. Let's talk about these cultural and heritage
22 sites. Just tell me what heritage sites you're
23 referring to and were you involved in that process?

24 A. So we've got a subject matter expert here today
25 that can speak much more intelligently about the

1 findings of the cultural surveys and the heritage
2 surveys and what we can or cannot disclose. But I can
3 tell you that generally, you know, I'm responsible for
4 overseeing cultural, biological, and civil survey
5 activities. I'm certainly not an expert when it comes
6 to cultural or heritage survey findings or the exact
7 quantity of findings.

8 Q. So that's something we should ask the other
9 Summit witness about?

10 A. I would concur.

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

13 ALJ HOGAN: Mr. Leibel, any questions?

14 MR. LEIBEL: Just a few, Judge.

15 CROSS EXAMINATION

16 BY MR. LEIBEL:

17 Q. And I'm going to jump around just a little bit.
18 You had said that once your pipeline is built, if it's
19 built, that you will have -- provide each landowner with
20 an as-built survey. Is that accurate?

21 A. We will provide each landowner with an as-built
22 survey upon completion of the pipeline and post
23 construction, yes.

24 MR. BENDER: And, Mr. Leibel, we're going to
25 have another witness who would be better equipped to

1 answer a lot of those questions if you want to wait.

2 MR. LEIBEL: Okay. That's fine.

3 BY MR. LEIBEL:

4 Q. Have you reviewed -- there's been a lot of
5 discussion earlier about this dispersement model that
6 was prepared by some people for Summit. Have you
7 reviewed that dispersement model?

8 A. I am generally aware of the dispersion model.
9 I'm certainly not inclined to speak to that or an expert
10 in that field. I'm here to design, construct, and
11 install the pipeline facilities. Certainly we have
12 others that can speak, you know, more intelligently to
13 those dispersion models. I'm certainly not that person.

14 Q. Well, you have intermediate authority for
15 routing; right?

16 A. I have authority to manage the route, correct.

17 Q. And so you have authority to route, but you
18 don't know what the dispersion model says?

19 A. I've read the dispersion analysis. I'm not
20 inclined to speak to it here today. Certainly not an
21 expert in that so...

22 We have experts and those can be, you know,
23 called upon.

24 MR. LEIBEL: I don't have any more questions.

25 ALJ HOGAN: Mr. Pranis, any questions?

1 MR. PRANIS: No questions, Your Honor.

2 ALJ HOGAN: Commissioner Christmann.

3 COMMISSIONER CHRISTMANN: In Oliver, Morton, and
4 Burleigh counties, are any of those pump stations in
5 here?

6 THE WITNESS: Yes. I believe that there is a
7 pump station in Burleigh County.

8 COMMISSIONER CHRISTMANN: Can you tell me what
9 map page number it is?

10 THE WITNESS: Yeah. I think if you turn to page
11 3 of the application and you look at Figure 1.1, which
12 is the project overview map, you can see --

13 MR. BENDER: Erik, give him a few moments to
14 find the --

15 THE WITNESS: Okay. Sorry.

16 MR. BENDER: That's it, Commissioner.

17 COMMISSIONER CHRISTMANN: Okay.

18 THE WITNESS: So there are, you know, yellow
19 circles that signify the locations of the pump stations.
20 There are three what I would call main line pump
21 stations which are signified by MPS. So there's one in
22 McIntosh, one in Burleigh, and one in Oliver County.
23 And then there's another trunkline pump station, as I
24 would call it, in eastern North Dakota, in Richland
25 County.

1 COMMISSIONER CHRISTMANN: Okay. On the Burleigh
2 County one, what page and the maps in this book?

3 THE WITNESS: I -- I don't have that map book in
4 front of me to cite the exact location of that pump
5 station, but I certainly can get that information.

6 COMMISSIONER CHRISTMANN: Okay. I'd like it for
7 both ones in these three counties.

8 THE WITNESS: Yes, sir.

9 COMMISSIONER CHRISTMANN: In subsequent
10 hearings, I want the ones in wherever we're at.

11 MR. BENDER: Commissioner, that's something we
12 can provide you before the end of the day. Would that
13 be --

14 COMMISSIONER CHRISTMANN: That would be fine.

15 MR. BENDER: Okay.

16 THE WITNESS: Yep, no problem.

17 COMMISSIONER CHRISTMANN: Okay. And then in the
18 information that you sent to us on January 17th, it's
19 our Docket No. 28, and it was a response to my questions
20 about where are the residences that are within 500 feet.
21 And Mr. Powell testified that only one of them is still
22 within 500 feet. But four of them are in Burleigh
23 County.

24 That map book is at the bottom of your pile, I
25 believe. At least it looks like it from here.

1 THE WITNESS: Okay.

2 COMMISSIONER CHRISTMANN: So on page 35 is one
3 of them. And so was it a significant reroute or did it
4 just angle a little bit more northeasterly to stay
5 500 feet away from that?

6 THE WITNESS: So I did a cursory analysis of
7 those waivers or the locations that would have been in
8 -- within that 500 feet. Generally, the pipeline is
9 currently sited for those nine locations anywhere
10 from 520 feet to 750 feet. So we tried to give
11 ourselves a little bit of a buffer there. We did not,
12 you know, put the pipeline at exactly 501 feet. So
13 generally those locations are, you know, 520 feet to
14 750 feet. And, you know, in order to achieve that
15 distance, it generally, you know, requires a very small
16 micro change in the route to adjust that.

17 COMMISSIONER CHRISTMANN: Generally what I'm
18 trying to figure out is if it's safe for me to assume
19 that these just go a little bit farther to be --

20 THE WITNESS: I would say that's a safe
21 assumption.

22 COMMISSIONER CHRISTMANN: -- a couple hundred
23 feet or if it juts way over and it's in a whole
24 different side of a section of land. That's --

25 THE WITNESS: So every location is still

1 currently on the existing property. So if we are
2 440 feet from a landowner or we're 440 feet from a
3 residence, we are now 520 to 750. So generally a very
4 small shift in order to get outside of that 500-foot
5 limit.

6 COMMISSIONER CHRISTMANN: Which is the one that
7 you're getting the waiver from that is not being
8 adjusted outside?

9 THE WITNESS: I believe it's in Sargent County.
10 I don't recall the exact landowner's name. Certainly
11 can provide that information. I believe it has been
12 provided on the exact tract number and can get the
13 corresponding location on our map books as well.

14 COMMISSIONER CHRISTMANN: So all four of the
15 ones in Burleigh are more than 500 now?

16 THE WITNESS: That's correct.

17 COMMISSIONER CHRISTMANN: And when you measure
18 from a residence, is it the outside wall of the
19 residence?

20 THE WITNESS: It's the closest location of the
21 actual residence.

22 COMMISSIONER CHRISTMANN: Is an attached garage,
23 if it's -- if that's on the side closest to the
24 pipeline --

25 THE WITNESS: An attached garage is

1 considered --

2 COMMISSIONER CHRISTMANN: -- is that part of the
3 residence?

4 THE WITNESS: A detached garage may be
5 considered. A shed, a barn, an uninhabitable structure is
6 not considered in that analysis. But generally it's the
7 closest location of the house with attached garage to
8 it.

9 COMMISSIONER CHRISTMANN: What would you do like
10 -- I don't know if there are any of these but it's why I
11 need to know so I need to know how much research to do,
12 but what if one of these farms is a dairy or something
13 where a barn might be occupied as many or more hours
14 than the house is? Do you consider that an occupied
15 structure? Because I don't think the law has to do with
16 residences. I think it has do with occupied structures.

17 THE WITNESS: Yeah, inhabitable structure. So
18 we will comply with whatever requirements there are. So
19 if there's an inhabited business, if there's a dairy
20 farm that has an office building inside of it, if
21 there's another barndominium, for example, you know, we
22 intend to comply with the waivers as required.

23 In our assessment as it stands today, we believe
24 we are in full compliance there. If there are
25 additional locations that, you know, you're aware of or

1 that we are not aware of, certainly would like to
2 understand where those are at, and we will either seek
3 the waiver or adjust the pipeline route as required.

4 COMMISSIONER CHRISTMANN: Okay. That's it, Your
5 Honor. I'm done.

6 ALJ HOGAN: All right. Commissioner
7 Haugen-Hoffart.

8 COMMISSIONER HAUGEN-HOFFART: Thank you.

9 I'm going to go back to the pump stations. You
10 indicated to Commissioner Christmann there's one in
11 Burleigh County; correct?

12 THE WITNESS: Correct.

13 COMMISSIONER HAUGEN-HOFFART: And in your
14 application, you state pump -- this is on page 8. "Pump
15 stations will have security fence around the perimeter.
16 All pumps and major equipment will be installed within a
17 shelter."

18 I could not find anywhere in your application
19 where you talk anything about security cameras. And are
20 you going to have security cameras along any of the
21 routes, pump stations that are going to be tied into the
22 control center in Iowa for monitoring?

23 THE WITNESS: We are currently considering
24 security cameras. I believe the current line of
25 thinking is that we will put cameras at the pump

1 stations. We will have, you know, automated security
2 gates that have, you know, access for certain
3 individuals, and then we'll have six-foot security fence
4 with barbwire at the top to make sure that intruders
5 don't enter the facilities.

6 COMMISSIONER HAUGEN-HOFFART: What would be your
7 determination if you will go with security cameras that
8 can be tied to your control center in Iowa for that
9 24/7, 365 days monitoring?

10 THE WITNESS: Again, I believe our current plan
11 is. I can certainly confirm that before the next
12 hearing. We believe that it is important to have a
13 visual representation of those critical above-ground
14 facilities. So I believe the current plan is to put
15 security cameras at the pump stations.

16 COMMISSIONER HAUGEN-HOFFART: Okay. I look
17 forward to the Commission receiving that information.

18 You talked about that you're responsible for the
19 design and construct of the route. And is it the plan
20 to do, if this is permitted, construction state by state
21 or will you have multiple states going on at the same
22 time? How do you -- just looking ahead, if it's
23 approved?

24 THE WITNESS: I mean, I would state that
25 generally the expectation is that the different permits

1 will come in at different times. Our current plan is to
2 construct the pipeline where we can when we can. We've
3 got contractors that have work packages and work scopes
4 that, you know, go across state lines. So generally
5 we'll have a number of pipeline spreads all operating at
6 the same time where we can when we can.

7 COMMISSIONER HAUGEN-HOFFART: The reason for me
8 questioning that is you talked about an onboarding
9 safety manager, having one. I would have concerns of
10 only having one if you have multiple jurisdictions going
11 on. So I hope it's the intent, if approved, that you
12 guys look at having adequate staff to ensure the safety
13 of it.

14 THE WITNESS: Certainly. So let me be more
15 clear on that. So we will have a full-time HSE manager,
16 and I believe he will have actual Summit employees
17 reporting to him. On top of that, we will have
18 full-time safety inspection and safety representatives
19 on every single pipeline spread. So we will have a
20 full-time safety representative, if not more than one,
21 dedicated to each individual pipeline spread and
22 dedicated to each individual pipeline contractor.

23 COMMISSIONER HAUGEN-HOFFART: Okay. My last
24 question, hoping, I'm going to go back to this Missouri
25 River crossing. And you stated that when you looked at

1 it, you first said you looked at the cultural heritage,
2 and that you had easements, and that was your preferred
3 route. And when you got questioned again and again
4 about it, the one thing I never heard you say is public
5 health, referencing the public health, looking at it. I
6 mean, everything has value, but to me the biggest thing
7 is public health.

8 THE WITNESS: Certainly.

9 COMMISSIONER HAUGEN-HOFFART: It's the people.

10 THE WITNESS: Yeah. I mean, I apologize for not
11 mentioning that, but to me public health is a
12 consideration not only for that crossing but for the
13 entire pipeline system.

14 COMMISSIONER HAUGEN-HOFFART: So when looking at
15 it -- so talk about public health on the preferred
16 route.

17 THE WITNESS: So --

18 COMMISSIONER HAUGEN-HOFFART: Give me your
19 philosophy, give me Summit's philosophy on how you put
20 public health first.

21 THE WITNESS: So public health is taken into
22 consideration with the design from everything that's
23 required by PHMSA to all the steps that Summit has
24 committed to to go above and beyond, depth of cover, you
25 know, all those different things that we're doing, a

1 hundred percent X-ray, all the different inspections
2 that are happening construction -- during construction
3 and post construction. You know, we're using
4 domestically-sourced, you know, American steel. We're
5 using what we would think are the best of the best
6 contractors.

7 Every decision that we make has safety in mind
8 and public health in mind. You know, I -- you know,
9 Mr. McCown spoke that pipelines are a very safe way of
10 moving commodity, and in my experience that has been the
11 case.

12 And so certainly we're going to comply with
13 everything the Federal Government requires. We're going
14 to go above and beyond where we can. And we're -- you
15 know, certainly you have my commitment that we are going
16 to build a safe pipeline.

17 COMMISSIONER HAUGEN-HOFFART: So I understand
18 that that's the best -- the safest way. But you're
19 bringing it through an area that has a lot of
20 population, a lot of public health concerns. So how did
21 you factor that in? How did you factor that in for the
22 citizens of Burleigh County?

23 THE WITNESS: So, again, the original route was
24 actually closer to the city of Bismarck. We made a
25 decision to move that further out. The original route

1 was outside of -- well outside of the city limits and
2 well outside of the, you know, 2045 development plans,
3 but it's certainly even further out now. So we did make
4 that decision to move the pipeline further out. I think
5 generally one to two and a half miles even further out
6 from where it currently was sited. So we made that
7 decision with public health in mind.

8 We certainly think that four and a half to five
9 miles outside of the current city limits is more than
10 acceptable. And we also think that, you know, it's
11 witnessed by the fact that there are multiple hazardous
12 liquid pipelines going through the heart of Bismarck
13 right now with homes, churches, schools all around them
14 today. And my inspection of those, some were very close
15 to the current houses, tens of feet, hundred feet from a
16 high school. So we're certainly going to be much
17 further away than those existing pipelines that are in
18 operation today in Burleigh County.

19 COMMISSIONER HAUGEN-HOFFART: This is a new
20 pipeline. Big pipeline. And if we do this, we got to
21 do it right.

22 THE WITNESS: I agree.

23 COMMISSIONER HAUGEN-HOFFART: And I think it's
24 all stakeholders coming to the table.

25 So one last question. Would Summit consider --

1 would you consider moving it out further north?

2 THE WITNESS: That's not my determination or --
3 it's not my decision to make. We've got, you know, a
4 permitting process, as you guys know, in the state of
5 North Dakota. We've got a federal permit process with
6 the Army Corps of Engineers. We're certainly well down
7 the road on all of those processes. And, again, I'm not
8 the person to make the decision to move the route
9 arbitrarily even further out. I believe that it's
10 currently sited in a very safe location so I'll leave it
11 at that.

12 COMMISSIONER HAUGEN-HOFFART: Okay. No further
13 questions.

14 THE WITNESS: Thank you.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: The facilities
17 that are associated with this pipeline include the
18 valves, the pump stations, and the pig launchers. Are
19 there any other facilities associated with it?

20 THE WITNESS: Yes. I guess it depends what you
21 consider a facility. So there will be additional
22 above-ground structures. There will be pipeline
23 markers. There would be cathodic protection test
24 stations which are generally located every mile and at
25 every foreign line crossing to -- you know, based on our

1 current cathodic protection design. So there are
2 additional, you know, I would say less permanent markers
3 and things along the pipeline route, but the permanent
4 facilities are generally the main line valves, the
5 pipeline launcher/receivers, and the pump stations.

6 SUBSTITUTE DECISIONMAKER DAWSON: And are any of
7 the launchers in the counties that we're talking about
8 today, Burleigh, Morton, Oliver?

9 THE WITNESS: Yes.

10 SUBSTITUTE DECISIONMAKER DAWSON: Okay. How
11 many launchers are there in North Dakota --

12 THE WITNESS: I'd have to --

13 SUBSTITUTE DECISIONMAKER DAWSON: -- about?

14 THE WITNESS: You know, generally there will be
15 a launcher and a receiver at the start and end of a
16 pipeline.

17 SUBSTITUTE DECISIONMAKER DAWSON: Okay.

18 THE WITNESS: So, you know, the 8-inch pipeline,
19 for example, has a launcher at the Tharaldson plant and
20 a receiver where it changes diameter. We've got a
21 receiver at that tie-in point at, you know, our pump
22 station there for the 4-inch. And we have a launcher on
23 the 12-inch pipeline that leaves there headed towards
24 McPherson county. And then we have a number of 24-inch
25 launchers and receivers on the main line as well,

1 including one at the termination point of the pipeline.

2 SUBSTITUTE DECISIONMAKER DAWSON: I thought I
3 heard earlier that there might be winter construction.
4 Is that incorrect or correct?

5 THE WITNESS: I think, you know, generally, we
6 are not planning for construction. I would say that
7 there could certainly be construction activities taking
8 place in the winter. You know, moving of equipment, you
9 know, storing pipe, you know, HDDs. As it stands today,
10 we are currently planning to stop construction generally
11 in late November or whenever the ground freezes.

12 SUBSTITUTE DECISIONMAKER DAWSON: Okay. Will
13 all the welds be done by hand or are they done by a
14 machine?

15 THE WITNESS: So there will be automatic welding
16 on the 24-inch main line and then there will be stick
17 welding on the 12-inch, 8-inch, and 4-inch pipelines.

18 SUBSTITUTE DECISIONMAKER DAWSON: And my final
19 question. The contractors, do they have any
20 relationship to North Dakota? Are they from North
21 Dakota? Do they do business here on a regular basis?

22 THE WITNESS: I would state that the contractors
23 that we are selecting have both done pipeline work in
24 the state of North Dakota. They do not have their
25 permanent businesses in North Dakota, no. I'm not aware

1 of generally any pipeline contractors, you know, that
2 could handle 400-plus miles of pipe. There's a handful
3 of those across the whole industry. Certainly expect
4 there will be local help constructing this pipeline.
5 But, you know, Pumpco and Precision do not have their
6 places of business in North Dakota.

7 SUBSTITUTE DECISIONMAKER DAWSON: No further
8 questions for this witness.

9 ALJ HOGAN: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: I was reminded of one
11 more. Regarding the Missouri River crossing, you said
12 you were going to be, I think you said, at the least
13 49 feet below the bed. And I'm reminded of an old case,
14 and I don't remember if it was a Missouri River, per se,
15 crossing or if it was up on Lake Sakakawea that someone
16 did, and I don't remember whose lead they were
17 following, but I'm looking at this letter we got on
18 March 3rd that we talked about with Mr. Powell earlier
19 on landslide areas. But I'm thinking of an old case
20 where I believe a company had a plan to bore under
21 either the river or Lake Sakakawea, and somewhere along
22 the way in the case someone, who I'm guessing it was the
23 state geologist, recommended actually not going as deep
24 but to get into better geology for it.

25 THE WITNESS: Yep.

1 COMMISSIONER CHRISTMANN: It was safe. And so
2 I'm wondering, have you had that conversation yet? This
3 letter doesn't address it. It just talks landslides.
4 But has the state geologist given a thumbs up to this
5 strata, or whatever the term would be, that you're
6 aiming for the bore?

7 THE WITNESS: So generally we've completed
8 geotechnical investigations on, you know, both sides of
9 all of our major HDDs and we've done an engineering
10 analysis. And we also provide that data to our
11 drillers, you know, the experts in that, and they will
12 do an analysis to make sure that they agree, as you
13 said, that you go through the preferred geology.

14 I can certainly commit that we will review that
15 with, you know, any parties that, you know, you would
16 require, including the Geologic Survey.

17 COMMISSIONER CHRISTMANN: So if they recommended
18 a different strata, you would --

19 THE WITNESS: Very easy --

20 COMMISSIONER CHRISTMANN: -- adjust the plan?

21 THE WITNESS: Very easy to adjust the depth to
22 hit those different formations. And we're certainly,
23 you know, willing to review that and consult with them
24 as required.

25 COMMISSIONER CHRISTMANN: Thank you.

1 ALJ HOGAN: Mr. Bender, any redirect?

2 MR. BENDER: Your Honor, I don't have any
3 redirect. I just would like to point out to
4 Commissioner Christmann, actually it was my partner,
5 Mr. Gludt, who found this, but in Docket No. 28, which
6 we filed those -- that information on those various
7 pumping units, so it was filed on January 17th of 2023,
8 and there were specific locations of those pump
9 stations. If, after you look at those, and you decide
10 you need something more, please request it and we'll get
11 it to you. But I think that's going to get you what you
12 need.

13 COMMISSIONER CHRISTMANN: Thank you.

14 MR. BENDER: You bet. And, once again, no
15 questions.

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

17 Mr. Schock?

18 Mr. Bakke.

19 MR. BAKKE: Yeah, just a few follow-up
20 questions.

21 RECROSS EXAMINATION

22 BY MR. BAKKE:

23 Q. Would you take a look at Exhibit W135, the map,
24 the anticipated most preferred route provided by Summit?
25 Because I think that's a good map to show us the

1 Missouri River crossing and what could be done in
2 relation to moving this pipeline.

3 Do you see that once it gets west of the river
4 at the proposed location, that it then veers somewhat to
5 the north in Morton County until it gets to the Oliver
6 County line?

7 A. I'm looking at a map that was issued in October
8 of 2021 so it's a very preliminary analysis. I can't
9 state I know the exact location that this is crossing
10 based off of this really preliminary route.

11 Again, you know, we did the analysis of the
12 Missouri River crossing at a preliminary level looking
13 at the south and the north side, and then we did a much
14 deeper dive going several miles to the north and south
15 of our current sited location, which we believe is the
16 best location for all the cultural, you know, land
17 consideration, environmentally sensitive areas, and
18 constructibility reasons.

19 Q. Well, why don't we look at Exhibit 139 then.

20 A. So, yes, this is the same map with the
21 hand-drawn circles and arrows.

22 Q. Well, what this map says is that "The pdf map
23 also listed that the pipeline centerline is based on the
24 May 31, 2022, route," end quote.

25 So this would be the proposed route that they're

1 asking for now, Summit; correct?

2 A. I can't state that, you know, I know who
3 produced this map and which -- which version of the
4 route and how they even got the data to generate a map.
5 So I can't state with certainty that that is the correct
6 route.

7 Q. I believe -- I believe Burleigh County did. Are
8 you saying that's wrong where it says that this is the
9 pipeline centerline based on the May 31, 2022, route of
10 Summit?

11 A. I'm not -- I'm saying that I would need to go to
12 the 5/31 version of our route, which is nearly a year
13 old, and compare it to this to ensure that this is our
14 actual 5/31 route.

15 Q. Well, that was the last route that's requested
16 and the one that Summit's requesting from the PSC today;
17 correct?

18 A. I believe that there's certainly changes that
19 were made between May and when the actual application
20 was filed in October.

21 Q. Well, not to the route but perhaps minor changes
22 on some landowner's property, because you told us you
23 didn't move it off anybody's land, but you maybe moved
24 it to a little different location on their property per
25 their request; correct?

1 A. I said that a number of route changes now are
2 taking place for landowner considerations to accommodate
3 them. More large major reroutes were certainly
4 considered and implemented before we filed our
5 application. So that is what I would state on that.

6 Q. Well, I believe the May 31, 2022, route is the
7 requested route, but if it's different, I assume Summit
8 will let the PSC and the public know that. But let's
9 work with this map. If we look at that, we can see that
10 essentially what Summit has done in requesting their
11 route is they've requested a route for the pipeline in
12 relation to Bismarck that is generally as the crow
13 flies; correct?

14 MR. BENDER: I'm going to object, Your Honor.

15 A. I disagree.

16 MR. BENDER: This isn't recross. This is
17 another bite at the apple. I didn't hear any questions
18 having to do with this map, and now Mr. Bakke's just
19 taking another stab at the witness.

20 MR. BAKKE: I'm following up on the
21 commissioners' questions.

22 MR. BENDER: I don't think you are.

23 ALJ HOGAN: Can you tell me what you're getting
24 at, though?

25 MR. BAKKE: Well, what I'm getting at here is

1 they're -- what they've done is tried to save money
2 rather than going directly to the north from the
3 southern-most point of the pipeline as they reach the
4 bottom of this map in Burleigh County. If they went
5 directly north there, they completely avoid Menoken.
6 They've run east of Menoken. There's hardly any
7 911 points. There's very few homes. They could go all
8 the way up to past 150th or 156th Avenue, head to the
9 west, and still have their same river crossing. But
10 they're doing this route to save money on building a
11 shorter pipeline at the risk of public health.

12 A. So the shortest route would be the straight
13 route through the center of Bismarck. Certain --
14 certainly, you know, appreciate your input on how to
15 route a pipeline, you know, but we're not taking your
16 input into consideration on our route.

17 BY MR. BAKKE:

18 Q. Nor my client, Mr. Warford's?

19 A. We are willing to work with Mr. Warford on the
20 route on his property, certainly.

21 Q. Okay. Do you agree with me that there's many
22 fewer 911 points if you went directly to the north to
23 the east of Menoken than there are on the route that
24 Summit is requesting from the PSC?

25 A. I can't speculate on the number of 911 points if

1 we arbitrarily move the route further away from
2 Burleigh.

3 Q. They're right on the map. They're identified by
4 the purple dots. They came from the county.

5 A. I would need time to analyze and count the
6 quantity of dots, which it looks like there's hundreds
7 of. So I can't make that determination.

8 Q. So if you look at where Moffit road is on the
9 bottom and go directly north from there, you can't see
10 on this map that there appears to be less than eight 911
11 locations where you could go directly north for
12 approximately five to six miles?

13 A. So we're complying with PHMSA regulations.
14 We're complying with North Dakota state law in siting of
15 our pipeline. And we are seeking a permit for the route
16 here. You know, alternatives, you know, going
17 arbitrarily further away from four and a half to five
18 miles outside of the city limits are not being
19 considered at this time.

20 Q. Because that's not a public health consideration
21 that Summit has made or is willing to make in relation
22 to this pipeline; is that correct?

23 A. I disagree.

24 MR. BAKKE: I have nothing further.

25 ALJ HOGAN: Mr. Leibel, any other questions?

1 MR. LEIBEL: Yes.

2 RECROSS EXAMINATION

3 BY MR. LEIBEL:

4 Q. I just want to follow up on Commissioner
5 Haugen's questions. So you're part of the design and
6 this is designed to handle 18 million tons per year;
7 correct?

8 A. That is correct.

9 Q. And that's approximately a little under
10 50,000 tons of super critical CO2 every day; right?

11 A. I'd have to run -- do the math, but 18 million
12 tons divided by 365, whatever that number is.

13 Q. Okay. And I'll tell you it's 48 -- 49,200 --
14 well, whatever. But that's approximately -- and you're
15 one of the designers -- 2,000 tons of super critical CO2
16 every minute -- I'm sorry, every hour?

17 A. For 18 million tons --

18 Q. Cell phone that.

19 A. Math sounds correct. We currently have 9
20 million tons committed to our pipeline project. So that
21 math sounds correct. I can certainly, you know, get my
22 calculator out and look at it.

23 Q. Okay. So let's use the small number first, the
24 9 million tons per year. That's a little over a
25 thousand tons an hour; right?

1 A. Sure.

2 Q. About 18 -- a little bit under 18 tons per
3 minute?

4 A. We can break it down to seconds, whatever you'd
5 like to do. Yes.

6 Q. Okay. Well, and the point I'm making is I
7 understand you're comfortable with the risk to us, but
8 maybe we're not.

9 A. So there's a laundry list of items that we're
10 doing to make sure that the pipeline never leaves -- or
11 the CO2 never leaves the pipeline. And certainly, you
12 know, what happens when it leaves the pipeline has been
13 discussed ad nauseam today as well.

14 MR. LEIBEL: Thank you.

15 ALJ HOGAN: Mr. Pranis, any questions?

16 MR. PRANIS: No, Your Honor.

17 ALJ HOGAN: Any other questions from the
18 commissioners?

19 All right. Thank you. That's all the questions
20 we have for you.

21 Mr. Bender, do you want to call your next
22 witness?

23 MR. BENDER: Yes. We'll call Micah Rorie.

24 ALJ HOGAN: Good afternoon. I'll have you start
25 by stating your full name for the record and spelling

1 your last name.

2 MICAH RORIE: My name is Micah Rorie. Last name
3 is spelled R-O-R-I-E.

4 ALJ HOGAN: All right. And were you in the room
5 previously when I went through the penalties for
6 perjury?

7 MICAH RORIE: I wasn't. I was in another room
8 listening to the proceedings.

9 ALJ HOGAN: All right. Well, I'm required by
10 law to advise you on the penalties for perjury before
11 you testify today.

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

15 Do you understand what perjury is?

16 MICAH RORIE: I do.

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

20 MICAH RORIE: I do.

21 ALJ HOGAN: All right. Thank you.

22 Go ahead, Mr. Bender.

23 MR. BENDER: Thank you.

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MICAH RORIE,

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

DIRECT EXAMINATION

BY MR. BENDER:

Q. Micah, by whom are you employed?

A. I'm sorry?

Q. By whom are you employed?

A. Summit Carbon Solutions.

Q. In what capacity?

A. I'm the senior director of land services.

Q. Would you provide for us just briefly your educational background and work experience?

A. My educational background, I have a bachelor's in economics from Texas A&M University. Work experience spans about 15 years, primarily in the CapEx right of way acquisition part of the field, a various -- a broad spectrum of surface rights acquisition coupled with fee acquisition. And also have quite a bit of experience in the right of way land support for operations once a pipeline is in service.

Q. Have you worked on right of way acquisition and some pipelines in North Dakota prior to Summit's?

A. I have. I think the most relevant project I've worked on in North Dakota is I led and managed all of

1 the land acquisition for North and South Dakota for
2 Dakota Access Pipeline.

3 Q. Can you hear me okay? I saw a couple times you
4 were leaning --

5 A. I'm having trouble, yeah.

6 Q. Okay. I'll try to speak a little louder and
7 move the mic closer.

8 What has your role been with respect to this
9 project that's before the Commission today?

10 A. Well, my role is to manage all of the facets of
11 land acquisition. So everything from the title and due
12 diligence, courthouse research, all the way into the
13 easement agreements and fee purchases for the pipeline,
14 as well as, once the pipeline's in service, I'll manage
15 and lead all of the right of way support as far as
16 landowner support --

17 Q. Let's --

18 A. -- right of way acquisition.

19 Q. I'm sorry, I didn't mean to interrupt you.

20 Let's talk a little bit about some of the
21 questions that were asked before you had an opportunity
22 to take the witness stand, particularly the right of way
23 that Summit has acquired thus far. You would know those
24 numbers; is that correct?

25 A. I do.

1 Q. Okay. And did you have an opportunity to break
2 down the numbers by county?

3 A. Yes. I have those figures.

4 Q. Okay. I'll let you take it through any order
5 you'd like, but could you please break down for us,
6 first of all, the total right of way acquired in the
7 entire state and then break it down for us by county,
8 county by county? And do it slowly so we have an
9 opportunity to write it down.

10 ALJ HOGAN: Hang on.

11 A. Sure.

12 COMMISSIONER CHRISTMANN: Is there going to be
13 like a handout or do we all need to write all this stuff
14 down?

15 THE WITNESS: I printed one out for you,
16 Commissioner, if you'd like it.

17 MR. BENDER: Should we just print it out after
18 or do you want to take a break and have him do it?

19 COMMISSIONER CHRISTMANN: No, it would be fine
20 after.

21 MR. BENDER: Okay. All right.

22 COMMISSIONER CHRISTMANN: Thank you.

23 A. Right. So just to distinguish, when we're
24 talking about right of way mileage as it relates to this
25 proceeding and what I lead, it's tied to what's under

1 the jurisdiction of the Public Service Commission. So
2 there's a little bit of a difference between the
3 sequestration mileage and the pipeline mileage that's
4 outside of the sequestration area. So what I'll speak
5 to is specifically for the mileage that's tied to this
6 proceeding.

7 The overall percentage is 62.3 percent acquired
8 in terms of mileage. That equates to just under
9 200 miles. 199.46 miles acquired. When you break that
10 down into parcels, or in my world we call them tracts,
11 that's 535 parcels for 61.5 percent acquired.

12 If you go down to the county level, starting at
13 Oliver County, the mileage is over 88 percent along with
14 the tract percentage. Morton County is just under
15 81 percent in mileage and just over 80 percent in
16 tracts. Burleigh County is 55 percent in mileage and
17 just under 51 percent in tracts. McIntosh County is
18 77 percent in mileage, 76 percent in tracts. Logan
19 County is 83 percent in tracts and roughly that number
20 in mileage. Going to Dickey County, we're at 41 percent
21 of the mileage and just over 40 percent of the parcels.
22 Sargent is 76 percent of the mileage, 72 percent of the
23 parcels. Richland is 47 percent of the mileage,
24 49 percent, or just under 50 percent, of the parcels.
25 Cass County is 68 percent of the mileage and roughly

1 equivalent in tracts, 68 and a quarter.

2 Q. Thank you.

3 I'm going to switch gears here a little bit,
4 Micah. Probably not in today's hearing, at least I
5 don't specifically recall, but there has been some
6 testimony at county meetings and city meetings about the
7 fact that -- or the allegation that Summit is acquiring
8 blanket easements. Have you ever heard of that term?

9 A. I've heard of the term "blanket easements," yes.

10 Q. And what do you understand a blanket easement to
11 be?

12 A. A blanket easement is unlike our easements. A
13 blanket easement is where you get ingress and egress
14 under certain terms across an entire property. The
15 infrastructure tied to a blanket easement is not always
16 necessarily defined, certainly not to the level that we
17 define it with our landowners. They're typically much
18 more broad and not tied to what I typically do.

19 Q. What is it about the procedure in which Summit
20 is proceeding and acquiring easements that may give
21 someone the incorrect perception that you're acquiring
22 blanket easements?

23 A. I think that has a lot to do with recording in
24 terms of how the easements are memorialized in the
25 courthouses. While our process is certainly within the

1 parameters of what's required and allowable in these
2 counties, as evidenced by all of our easements have been
3 recorded and we have easements executed in every county
4 along the route, but typically in times past you could
5 record a rendering or an exhibit that showed the
6 proposed route that didn't necessarily have to be a
7 certified plat, and that was typical practice in North
8 Dakota. In recent years that's changed a little bit.

9 So what we do is, because we want to allow some
10 flexibility in our route in terms of if there's
11 unanticipated discoveries on the cultural or
12 environmental side, we want to have some flexibility in
13 our route, although that's entirely communicated to the
14 landowner. We record an easement that has a legal
15 description of the property that's being encumbered. We
16 supply the landowner, and the landowner acknowledges, an
17 exhibit that shows the proposed corridor, the proposed
18 footprint of the pipeline. That exhibit is housed with
19 both parties, us and the landowner, and acknowledged by
20 both.

21 And then what actually goes of record as far as
22 due diligence or what's discoverable in a total search
23 would be that there is an easement on this property,
24 this is the property that's encumbered, and then further
25 details would need to be tied to that exhibit that's

1 handed to the landowner and acknowledged by the
2 landowner.

3 Q. And is it a fair statement that the law has
4 changed in recent years and that's why you're taking a
5 little bit different approach to taking the easements
6 that you do in terms of what you attach as an exhibit?

7 A. That's correct.

8 Q. And let me ask you a few questions about that.
9 So when you were working for DAPL, what you would do is
10 you would take an easement and you would attach to that
11 easement a sketch that basically indicated where the
12 right of way would be; is that correct?

13 A. Yes.

14 Q. And then after the pipeline was put in, you
15 recorded another, not a sketch but a certified plat and
16 showed exactly where the pipeline was installed. It was
17 an as-built drawing; is that correct?

18 A. That's correct.

19 Q. And because of a statutory change, you can't now
20 attach a sketch to an easement and get it recorded. The
21 county recorders won't record that; is that correct?

22 A. That's right.

23 Q. So what you're doing is you're doing a sketch
24 and you're providing that sketch to the landowner but
25 just attaching a copy of a description of a tract of

1 land, and then after you -- after you install the
2 easement, you'll file an as-built drawing; is that
3 correct?

4 A. That's correct.

5 Q. So it's certainly not a blanket easement?

6 A. That's right. And there would be two filings in
7 the courthouse reported to the easement. One would be
8 the initial easement document memorializing that there's
9 an encumbrance on the property. And there will also be
10 an as-built affidavit filed post construction to show
11 the exact location of the pipeline so that everyone is
12 on notice as to where that pipeline is, what exact
13 parcel is encumbered by that pipeline, where it enters
14 and exits the property, etcetera.

15 Q. And will those surveys that are done and
16 attached to the easement, will those surveys need to be
17 prepared by North Dakota certified surveyors?

18 A. That's my understanding, yes.

19 Q. Will you hire North Dakota certified surveyors
20 to do that work?

21 A. I believe Summit will, yeah.

22 Q. There's also been some discussion about that
23 there's something in a -- not here today but at county
24 hearings, that there's something inappropriate with
25 filing memorandum of easement. Why don't you first tell

1 us what a memorandum of easement is, in your --

2 A. So a memorandum is -- it's -- the basic
3 understanding is that it's a placemaker in the
4 courthouse so that anyone that does any due diligence on
5 that property knows that there's an easement present on
6 the property. It doesn't necessarily list the terms and
7 conditions of the easement, but it always says the basic
8 form of there's an easement here, it's for this purpose,
9 here's when the work space expires, here's the property
10 encumbered, all of that. So it's typically much shorter
11 in nature than an easement itself. So that's what a
12 memorandum is.

13 Q. And if you file a memorandum of easement when
14 you initially take the easement, would you then attach
15 an exhibit which would generally describe the property
16 where the easement would be located?

17 A. Yes.

18 Q. And then after the line is installed and you
19 were to do an as-built survey, you would then record the
20 copy of the as-built; is that correct?

21 A. That's right. The as-built affidavit would be
22 recorded with the as-built as an exhibit. It would also
23 reference the recording of the memorandum so they would
24 be paired together.

25 MR. BENDER: That's all the questions I have,

1 Your Honor.

2 ALJ HOGAN: Mr. Pelham, any questions?

3 MR. PELHAM: I don't have any questions. Thank
4 you.

5 ALJ HOGAN: Mr. Schock?

6 MR. SCHOCK: No questions, Your Honor.

7 ALJ HOGAN: Mr. Bakke?

8 MR. BAKKE: Yes, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BAKKE:

11 Q. You mentioned the lowest percentage of easements
12 that have been attained by Summit are in Burleigh County
13 out of the counties in North Dakota; is that correct?

14 A. No, sir. That would be in Dickey County.

15 Q. Okay. And in Burleigh County, you said it's
16 51 percent of the tracts?

17 A. 51 percent of the tracts, that's correct.

18 Q. Okay. So on the lowest of almost all the
19 counties. And how many counties are there?

20 A. There are ten counties.

21 Q. Okay. And what do you attribute that to?

22 A. Can you help me there? What do I attribute what
23 to?

24 Q. Well, why is it so low in Burleigh County?

25 A. I wouldn't necessarily call it low, but I think

1 part of it is that the route has changed there and so
2 acquisition efforts had to restart on a decent portion
3 of the route in Burleigh County where that didn't really
4 have to happen at a large scale, as far as large linear
5 scale, in other counties, is part of it. I think there
6 are more opposing views --

7 Q. Sure, there's --

8 A. -- areas of -- in Burleigh County. But I also
9 think there's been a higher level of misinformation
10 disseminated in Burleigh County that we've had to really
11 work hard to overcome, and I think we've done a really
12 good job at it.

13 Q. And so you agree there's been much more
14 reluctance by Burleigh County landowners to allow this
15 pipeline to go through their property?

16 A. No, sir, I wouldn't agree with that. I think
17 more of our -- more of our challenge in Burleigh County
18 has to do with a lot of misinformation about a CO2
19 pipeline and a lot of misinformation about our company.
20 And as you well know, it's difficult to overcome that
21 quickly. So we've done a really good job, in my
22 opinion, of overcoming that in large areas of Burleigh
23 County, but it's a big county and there's a lot of
24 properties.

25 Q. Okay. And so there's been reluctance by

1 landowners in Burleigh County to sign up?

2 A. There's been a level of reluctance in Burleigh
3 County, yes, that's correct.

4 Q. Okay. And have some of the individuals -- do
5 you deal directly with the individuals where you're
6 trying to obtain easements?

7 A. I do. Not with all but with some.

8 Q. Okay. So how many have you been involved in
9 trying to obtain?

10 A. How many individuals have I been involved with?

11 Q. Yes.

12 A. I'd have to think about that. A decent number.

13 Q. Is that five? Ten?

14 A. Dozens.

15 Q. Dozens?

16 A. Dozens. I mean, I --

17 Q. And how many have you spoken to who have refused
18 to provide an easement?

19 A. Maybe three.

20 Q. Okay. And do you recall who the three were that
21 refused to provide the easement?

22 A. I do.

23 Q. Okay. And who were they?

24 A. I don't know that I'm particularly comfortable
25 sharing landowner names in this hearing unless the

1 landowner was comfortable with me sharing their name.

2 Q. Well, you've talked about this disinformation.
3 I want to follow up on that and I want to understand
4 what personal knowledge you have as to why people have
5 refused, what they've said, and who it was?

6 A. Well, I manage every person in North Dakota
7 that's tied to land acquisition aside from Mr. Powell
8 who I report to. I manage every person that deals with
9 landowners. So I have a very good understanding of what
10 the sentiments are in this state and what type of
11 feedback we're receiving from landowners, you know,
12 based on our various conversations. That doesn't
13 necessarily mean that I've met with all of them, but it
14 certainly means that I'm not comfortable sharing their
15 names.

16 Q. Okay. And I'm not asking you about the whole
17 state. We were talking about Burleigh County, and you
18 told me you've personally met with three landowners who
19 refused to provide easements. Tell me who they were.

20 ALJ HOGAN: Mr. Rorie, can you scoot your mic a
21 little bit closer --

22 THE WITNESS: Sure.

23 ALJ HOGAN: -- so we can hear you better?

24 MR. BENDER: And, Your Honor, I don't understand
25 why it's important for Mr. Rorie to give names. If

1 Mr. Bakke wants to talk about, you know, circumstances
2 on why they didn't sign, I think we can probably go that
3 far, but we don't want Mr. Rorie providing names of
4 individuals when we haven't talked to them and know what
5 their reaction to that would be.

6 ALJ HOGAN: I agree. If you want to ask him
7 about the sentiment or the reasons for that, that's
8 fine, but I don't think we need to provide the
9 landowners' names.

10 MR. BAKKE: And here's the problem with that.
11 Because when we call our witnesses, if he gives the name
12 and says they refused for some reason, the only way we
13 can verify whether that's correct or incorrect is to
14 know the name of the landowner and ask him. So that's
15 why I think this information is important. But let me
16 approach it another way and see what he says.

17 BY MR. BAKKE:

18 Q. So these three that refused, did they tell you
19 it was based on some disinformation by somebody?

20 A. It was a mix of objections.

21 Q. Well, what were some of the objections?

22 A. Well, as I stated, a lot of it was based in
23 information that they had heard early on in the
24 project's onset, information maybe they've received from
25 folks opposing the pipeline or there's a variety of

1 avenues in which they could receive that information.
2 That was part of the equation. Some of it was tied to
3 want to get -- understanding the project is good or
4 beneficial but wanting it to go on their neighbor.

5 Q. Okay. So there -- one or more of these people
6 who refused personally to you said "I'm basing my
7 decision on information from other people who are
8 opposed to the pipeline"?

9 A. Yeah. We just gathered from the conversation
10 that their objections were steeped in misinformation, in
11 my opinion.

12 Q. What did they tell you that you're claiming was
13 misinformation?

14 A. That it was flammable, right, that it was much
15 more dangerous than another liquid pipeline, that it
16 would -- that it would drastically affect the
17 development of their property, or that they felt that it
18 was some sort of conspiracy government-wise. So some of
19 it was politically driven.

20 Q. And where did this disinformation you're
21 claiming come from?

22 A. I didn't ask them that. We just were privileged
23 to have a reasonable conversation with those folks and
24 an opportunity to have a chance to set the record
25 straight, which I feel that we did.

1 Q. Okay. And whether or not it -- CO2 is more
2 dangerous than natural gas is subject to considerable
3 debate. True?

4 A. I -- that's not really my area of expertise to
5 decide the -- what's debatable or not. I can tell you
6 on the land side our messaging is that this is a safe
7 pipeline, certainly safer than something that's
8 combustible.

9 Q. And I understand that's your messaging, but
10 you're not saying for someone to have a belief that
11 having this pipeline on their property could be more
12 dangerous than a natural gas pipeline is misinformation,
13 are you?

14 A. What I'm saying is the way it was phrased to me
15 from those landowners that we're talking about, it
16 seemed much more leaning towards what we're hearing from
17 sources of misinformation on this project.

18 So I'm not going to say that a landowner's
19 feelings about something are to be discounted. What I
20 am saying is, just to answer your question, what did I
21 feel was the cause of their objection to the pipeline
22 being placed on their property. I feel like quite a bit
23 of it was tied to some bending of facts.

24 Q. Well, who are the sources of misinformation that
25 you're claiming are putting out information that's

1 incorrect about this project?

2 A. Again, I didn't ask them their sources. I
3 didn't -- I didn't go into that and we don't spend a
4 whole lot of time doing that with landowners. We listen
5 to their concerns and try to temper them and have an
6 open dialogue with them. That's my purpose there.

7 Q. So are you able to identify whether there's any
8 sources of misinformation out there? Did you do
9 anything to investigate that?

10 A. I -- the land group's job is not to investigate
11 sources of misinformation. That's -- that's not really
12 what we do.

13 Q. Okay. Well, the reason I ask that is you're
14 attributing the lower percentage in Burleigh County to
15 what you're calling misinformation, and it sounds like
16 you've done no investigation to determine whether
17 there's any misinformation or not?

18 A. Well, I mean it depends on your definition of an
19 investigation, right? So I don't look into sources of
20 misinformation as part of my job, right? I don't look
21 into that. What I do is prepare myself and prepare my
22 teams with facts in the event we have the ability or the
23 opportunity to visit with the landowner, that we can
24 present truthful facts to them so that they can have
25 real information about what this project is trying to

1 achieve, how we're going to behave, how we're going to
2 operate this pipeline. So my job is more focused on
3 setting the record straight in terms of facts instead of
4 trying to chase around all the different sources.

5 Q. Okay. And then did Summit do anything to
6 determine whether or not there would be a depreciation
7 or diminishment in value on the land values for people
8 who signed an easement allowing a pipeline on their
9 property in Burleigh County?

10 A. We take a look at that generally. I mean, it's
11 typical practice when you look at a project's onset,
12 market studies and things of that nature, to see if
13 there's any empirical evidence of diminishing value,
14 along with just seeing what the market data is for fee
15 sales and how that translates to a surface acquisition,
16 which is typically a different value than a fee sale.
17 But we did look into comparable sales. And I don't
18 think that we found anything along this footprint.

19 I certainly have not found it other than very
20 rare circumstances in my career, which spans thousands
21 of miles of right of way and 11,000 miles of pipeline
22 across 13 states. Very rarely have I ever seen any
23 diminishing value in terms of what you have property A
24 and property B and one has a pipeline and one doesn't.
25 We don't see sales comparables that show some sort of

1 lower price for the property with the pipeline on it.

2 Q. So what did Summit do to determine comparable
3 values?

4 A. Well, they -- they looked at a broad mix of
5 properties, right? They go into three or four different
6 categories. I think to some extent they looked at
7 existing encumbrances, but really it was more about the
8 nature of the property.

9 So some of the points you made earlier about
10 development properties versus agricultural properties.
11 And I would go into rural residential, etcetera,
12 transitional properties. Those typically are more
13 encumbered by nature because they have to have easements
14 to develop or they have to then place easements to
15 develop those properties. So it's a different view on
16 that property. And we take that into account.

17 Q. Well, what did Summit do specifically in north
18 and east Burleigh County to determine what comparable
19 sales information was available, if anything?

20 A. We performed market studies at the project onset
21 and then keep our eye on property values in all areas of
22 the pipeline.

23 Q. Okay. So tell me what the market can study --
24 market study told you, who conducted it, what it
25 consisted of?

1 A. I -- I'd defer to our counsel to tell me whether
2 or not I need to talk about who conducted it. I mean,
3 I'd be glad to share that if he tells me I can.

4 But the way a market study is performed on a
5 pipeline, you look at comparable sales for a variety of
6 property types, certainly property types that are in
7 proximity of the pipeline route and some that aren't to
8 get a good data set. So you look at agricultural
9 properties. You look at rural residential properties.
10 You look at transitional properties, meaning in the
11 early stages of development, already platted, that type
12 of designation. Then we look at a mix of values there
13 to see what the average would look like and what would
14 be fair in terms of valuation so that we have a viable
15 number to rely upon in terms of valuing these easements.

16 Q. So who did the market study for Summit of
17 Burleigh County in the north --

18 MR. BENDER: I'll object and we're not going to
19 provide that information.

20 MR. BAKKE: Well, that's not confidential or
21 classified. A market study?

22 ALJ HOGAN: Can you explain to me why it's
23 relevant, though? I mean, I think we're straying from
24 relevance here for the purpose of PSC jurisdiction.

25 MR. BAKKE: Yeah, Your Honor -- no. I

1 understand, Your Honor. However, he's trying to say
2 that the values they were proposing -- he's the one that
3 said there was misinformation that it was going to
4 diminish the value. A lot of this land is development
5 land that is much more valuable than the numbers they're
6 offering. And when you encumber it with an easement
7 across much or the whole length of the property, that
8 significantly affects the land for development land.

9 ALJ HOGAN: Well, and I think you can certainly
10 make those arguments and present your own witnesses, but
11 I think he's addressed that, those questions already,
12 that in their research, that they didn't see that.

13 BY MR. BAKKE:

14 Q. So you're not going to tell us who did this
15 market study?

16 A. I'll help you a little bit there. I can tell
17 you that it's a reputable national firm that conducts
18 market studies on the norm.

19 Q. Okay. So it wasn't anyone from Burleigh County
20 or Bismarck or Mandan who would be familiar with the
21 local land values?

22 A. I don't know all the particular locations of the
23 personnel that performed those so I wouldn't say that
24 they weren't from Burleigh County or some of them from
25 Burleigh County. I simply just don't know.

1 Q. Okay. But it was a national company you
2 engaged?

3 A. It was a national company that looked at recent
4 comparable sales in and around Burleigh County and a
5 variety of them.

6 Q. Can you take a look at Exhibit 139.

7 A. You'll have to guide me to it.

8 ALJ HOGAN: The other binder.

9 THE WITNESS: Okay.

10 A. Okay.

11 Q. And you see the map and you can see that there's
12 developments along Highway 83 north of Bismarck, close
13 to the pipeline proposed route? You see that there?

14 A. Pare me down to Highway 3, please. I'm not
15 seeing it.

16 Q. 83.

17 A. You said 83?

18 Q. Yes.

19 A. It looks like there's some sort of development
20 on the east side of it.

21 Q. Are you from Bismarck, Mandan, or ever lived
22 here?

23 A. No. I wouldn't say that I've lived here
24 permanently. Spent quite a bit of time staying here
25 over the years, but I haven't lived here, no.

1 Q. Okay. Know anything about development land
2 prices in north and east Bismarck?

3 A. I feel like I have a general cursory
4 understanding of it.

5 Q. Okay. So let's take Heritage Reserve. You see
6 that on there?

7 A. Yes.

8 Q. Okay. Is land near that, if the pipeline's not
9 there, likely to be development land given the
10 subdivisions that are identified in that area as already
11 being subdivided and homes already being built?

12 A. I'd be speculating if I said anything was likely
13 to be development land. I don't -- I don't know that I
14 can ascertain whether it's likely to be development
15 land.

16 Q. Do you know where the nearby land has value to
17 be sold as development land?

18 A. I think that's up to the buyer.

19 Q. So you don't know?

20 A. I don't -- I don't know this particular section
21 that you've highlighted here. No, I don't.

22 Q. Do you know what land in that area sells for per
23 acre?

24 A. I have a general idea of what things sell for
25 per acre.

1 Q. Okay. What generally do you think it sells for
2 per acre?

3 A. I don't know that I really want to get into it.
4 I mean, it's -- as far as values per acre, it's just a
5 wide variety. If you have a 10-acre property or a
6 2-acre property, if you have a 40-acre property or a
7 half section or a quarter section, all that varies. And
8 all of those things are in play right there.

9 Q. Okay.

10 A. So it's very difficult for me to say.

11 Q. Let's take 80 acres. What do you think 80 acres
12 is worth --

13 MR. BENDER: Your Honor, this is -- I'm going to
14 object. This is not a condemnation hearing. I'm not
15 sure what Mr. Bakke's trying to do other than waste a
16 bunch of time.

17 MR. BAKKE: Well, I can move on. I think he's
18 answered my question.

19 BY MR. BAKKE:

20 Q. Let's talk about procuring these easements. Has
21 Summit threatened eminent domain to landowners if they
22 don't agree to sign an easement agreement with Summit?

23 A. Not to my knowledge they have.

24 Q. Would that be appropriate?

25 A. To -- would what be appropriate?

1 Q. To threaten landowners in Burleigh County that
2 Summit's going to pursue eminent domain if they don't
3 agree to an easement with Summit?

4 A. It would very -- be very inappropriate for my
5 team to talk about that.

6 Q. Okay. That would be wrong?

7 A. I don't -- I don't have my teams talk about
8 eminent domain. Now, what I can say happens and what's
9 primarily the cause of this topic is that it's brought
10 up because it's a viable topic to be brought up by a
11 landowner when they're talking to a pipeline, right? So
12 it gets brought up typically by the landowner. And the
13 result there, unless my team or anybody from Summit says
14 no, we will not explore even as a last of last resort
15 what rights we were afforded in North Dakota in terms of
16 eminent domain, unless we blanketly commit to that, a
17 lot of times that's perceived as a threat because we
18 won't check the box that says that we won't.

19 But what I can say is that if any of my agents
20 or managers were to ever threaten that, they'd be
21 removed from our project that day.

22 Q. And do you agree that landowners would feel
23 intimidated by that if Summit told them, if they don't
24 agree to enter an easement with Summit, that Summit
25 will --

1 MR. BENDER: Objection.

2 Q. -- pursue eminent domain?

3 MR. BENDER: Excuse me, Randy.

4 Objection. Calls for speculation.

5 ALJ HOGAN: The objection is noted. He can
6 answer.

7 A. I don't know. I can't speak to a landowner's
8 feelings about that. What I can say is that it damages
9 our relationship with the landowner to behave that way.
10 It doesn't lay the framework for a good relationship
11 which we intend to have and we strive very hard to have
12 with the landowner because it's a permanent relationship
13 in nature. So it does create damage to do that and it's
14 painful for both sides. So we avoid that as the -- one
15 of the number one rules for my team, that they're not to
16 do it.

17 Q. And we know that Summit is a multibillion dollar
18 company; correct?

19 A. Summit Carbon? Summit Ag? Which one are you
20 referring to?

21 Q. Summit entities.

22 A. I would say that's fair.

23 Q. Okay. And many of these landowners are small
24 landowners who this is perhaps the only property that
25 they have?

1 A. Not to offend, Mr. Bakke, but I don't know what
2 your definition of "small" is. And my team doesn't look
3 at a landowner in terms of whether they're small or
4 large. We look at them as people, people that we need
5 to talk to about putting a pipeline in the ground. So I
6 don't know how to answer that question.

7 Q. Now, you talked about this -- I think Mr. Bender
8 called it a certified surveyor. But these easements
9 that you've obtained, am I correct in understanding that
10 you provide proposed easements to landowners that are
11 not certified by a surveyor?

12 A. The sketches that Mr. Bender referred to that
13 are coupled with our easement agreements are performed
14 by surveyors in terms of the routing. The sketch itself
15 is not a certified plat within the parameters of what
16 would constitute a certified plat in North Dakota,
17 that's correct.

18 Q. Okay. And what's a certified plat?

19 A. Well, I mean when I say certified, to the extent
20 of what I know all the different facets of survey, it
21 has to be stamped by an RPLS, a registered surveyor in
22 the state of North Dakota. And with that comes a lot of
23 responsibility in terms of criteria to need to be met in
24 order to be certified. Those stamps are very hard to
25 come by. Those surveyors earn them. It takes them a

1 long time to get them. And they don't stamp things
2 unless those criteria are met.

3 Q. And I think you said that Summit did not have
4 surveys done by what you're calling certified land
5 surveyors in terms of the easements it obtained from
6 individuals who are allowing an easement on their
7 property for the pipeline?

8 A. No. I said the opposite. So the survey crews
9 or the people that were supervised to perform those
10 surveys, or at least the supervisory aspect of that
11 survey activity, was performed, to my knowledge, by
12 North Dakota surveyors. Now, the folks having control
13 or the folks maybe doing some of the smaller pieces of
14 survey activity may not have been. I can't speak to
15 that. But I know that the survey crews themselves were
16 supervised by folks that were allowed to do that in
17 North Dakota and that they're licensed surveyors.

18 My point was, and in an effort to answer your
19 question, is the exhibits tied to the easements that the
20 landowner agrees to, has copies of it, is very aware of
21 what the footprint entails, are not stamped plats, some
22 of the reasons I cited earlier.

23 Q. Well, I think you've answered a different
24 question. What I'm asking about is the easements you
25 present to the landowners, you provide them a survey

1 with that; correct?

2 A. I provide them a rendering. Mr. Bender called
3 it a sketch. That's also common, to call it a sketch.
4 The route of the pipeline, the point of beginning, the
5 point of terminus, the general location of the pipeline.
6 Most of that is done by folks that perform the survey
7 work. So I think it's a dual answer to your question.
8 The surveyors perform the work. The sketch is not a
9 certified plat.

10 Q. Okay. And when you filed the easement, is there
11 a certified survey filed at the courthouse?

12 A. When we file an as-built affidavit, absolutely.
13 The initial filing, whether it be a memorandum in some
14 instances, which is not really common, or whether it be
15 the easement itself, it cites the property that's
16 encumbered.

17 Q. Well, and so you don't, when you obtain the
18 easement, provide the landowner with any type of
19 certified land survey by a professional land surveyor in
20 North Dakota; correct?

21 A. Again, it -- there's two answers to your
22 question. So the work that was performed to ascertain
23 that footprint, outside of the environmental and
24 cultural aspects of survey activity, we're talking
25 strictly civil survey which is what relates to a North

1 Dakota surveyor, the vast majority of that was performed
2 on the ground in that landowner's field by surveyors who
3 then gather that data, incorporate it into our GIS
4 system and our systems that generate the sketches.

5 So that's where the separation is. The
6 surveyors perform the work. The sketch itself is not a
7 certified plat. The final location of the pipeline will
8 be on an as-built stamped by a North Dakota surveyor.

9 Q. But when you talk about an as-built, you're
10 talking about after the pipeline is installed; correct?

11 A. That's correct.

12 Q. Okay. And that's not what I'm asking about.

13 A. Okay.

14 Q. What I'm asking about is when you get assigned
15 an easement from a landowner for the pipe to go across
16 their property, is a survey completed, stamped, and
17 signed by a professional land surveyor in North Dakota?

18 A. Is the survey completed? Typically, yes. Is it
19 stamped by a North Dakota professional on the onset of
20 the execution of that easement? No.

21 Q. Okay. And so what that means is that these
22 easements that you say you procured are not valid
23 easements without being signed and stamped by a
24 professional land surveyor; correct?

25 A. I would agree with that. If they were invalid

1 easements, they wouldn't be recorded.

2 Q. Well, the ones who record it is Summit; correct?

3 A. Well, the courthouse. Government employees
4 record those easements.

5 Q. Yeah. And so the landowner doesn't even know
6 with certainty where it is on their land that pipe's
7 going to go until that final survey is done and the
8 pipeline is installed; correct?

9 A. I would disagree with that. So as I stated
10 before, the landowner's provided, in every instance,
11 zero exceptions, every time, an easement agreement with
12 an exhibit that has the proposed footprint on it.

13 Now, as I mentioned earlier, there's flexibility
14 in that route for a number of reasons. But the
15 landowner's fully aware, and by executing that easement
16 I would assume they don't object to, the footprint that
17 we proposed.

18 UNIDENTIFIED SPEAKER: Your Honor, if I may,
19 we've got a room full of folks that do want to give some
20 public testimony. The Commission doesn't have
21 jurisdiction over easements. I would ask that Mr. Bakke
22 move on to questions related to the siting application.

23 MR. BAKKE: And the reason I'm covering it is
24 Mr. Bender, but I can button this up quickly.

25 ALJ HOGAN: Okay. I'd appreciate it.

1 BY MR. BAKKE:

2 Q. Can you take a look at Exhibit 106 in your
3 binder?

4 A. You said 106, Mr. Bakke?

5 Q. Yes.

6 A. Okay.

7 Q. Have you seen this February 11, 2023, letter
8 prior to today from the North Dakota Society of
9 Professional Land Surveyors?

10 A. I don't believe I have.

11 Q. Were you aware there was a letter presented to
12 the PSC by the North Dakota Society of Professional Land
13 Surveyors which was in direct response to concerns they
14 had about Summit not following appropriate surveying
15 requirements and having the surveys stamped and signed
16 by a professional land surveyor in North Dakota?

17 A. I wasn't aware that a letter was sent to the
18 Public Service Commission. I was aware of comments
19 having been made publicly somewhere and folks sort of --
20 there's been some grumblings from surveyors in North
21 Dakota about this topic.

22 Q. And just one final topic very briefly, this
23 issue of a blanket easement. I heard you say that a
24 blanket easement is one where it would allow for Summit
25 in this case to be able to ingress and egress from any

1 portion of the landowner's property, not just the
2 easement area; correct?

3 A. I think that's part of it. It was part of an
4 answer. I think if you were to put a percentage on
5 that, that's about 10 percent of my answer. 90 percent
6 of it is that the infrastructure is not defined on a
7 blanket easement.

8 MR. BAKKE: Okay. That's all I have.

9 ALJ HOGAN: Mr. Leibel, any questions?

10 MR. LEIBEL: Yes.

11 CROSS EXAMINATION

12 BY MR. LEIBEL:

13 Q. Mr. Rorie, you've heard some discussion about
14 Summit's dispersement model that's been created. Are
15 you familiar with the dispersement model?

16 A. I'm really not. I mean, I've looked at it sort
17 of high level, right, but it's not my area of expertise.

18 Q. Well, and you're one of the guys -- well, you
19 run the teams that meet with all the landowners; right?

20 A. That's correct.

21 Q. Now, there was a discussion a little bit that
22 you don't, you know, in any way, your team is not to
23 discuss eminent domain unless a landowner brings it up;
24 is that right?

25 A. That's fair, yeah.

1 Q. Okay. Now, you've signed -- I mean, I knew I
2 remembered your name from something. You signed
3 affidavits that were used by Summit in over 25 different
4 lawsuits; right?

5 A. Which lawsuits are you referring to?

6 Q. The lawsuits that were filed in North Dakota
7 against North Dakota landowners that -- asking for
8 survey access.

9 A. Yes, I did sign those affidavits.

10 MR. LEIBEL: I don't have anything further.

11 ALJ HOGAN: Mr. Pranis, did you have any
12 questions for this witness?

13 MR. PRANIS: No, Your Honor. Thank you.

14 ALJ HOGAN: Commissioner Christmann.

15 COMMISSIONER CHRISTMANN: Yes, Your Honor, just,
16 I think, generally.

17 I find your statistics interesting on
18 acquisitions. I would have expected the counties to be
19 more similar with, you know, maybe a real small county
20 could be an anomaly one way or the other, but there's
21 quite a spread. There's four counties that are
22 significantly lower than the other six. And I don't
23 think they even touch each other. They're kind of
24 spread out.

25 Is there any connection between who you had as

1 land agents in places that maybe did a better or poorer
2 job? I can see Burleigh maybe potentially being an
3 exception because of potential development, but why
4 would you imagine that Richland and Emmons and -- which
5 was the other one that was real low? -- Dickey counties
6 would be so much lower than basically their neighbors on
7 either side of them?

8 THE WITNESS: Well, Richland actually tied to
9 the math. So that's our largest county. So to get a
10 higher percentage there, it's just more people and more
11 agreements to reach than what you would say in Morton
12 County or even Emmons County. So Richland County is our
13 largest county so it's going to take us, minus the
14 mission, probably the longest to get to a hundred
15 percent simply because of the number of conversations.

16 Dickey County is a totally different situation.
17 We -- a large number of landowners in Dickey County have
18 retained one law group to represent them. And we've
19 reached an agreement in principle with that law group so
20 I expect to report a little bit higher numbers in Dickey
21 County by the time we convene in our next hearing. So
22 in terms of jumping north of 60 percent in Dickey
23 County, we've reached an agreement with those folks.

24 So that's typically how it goes when we get to
25 this phase of acquisition. If there's law groups, it

1 will sway your percentages. So I don't know that I
2 could say that it was due to poor work by land agents,
3 but what's fair is there's a curve in terms of land
4 agents and some of them are better than others.

5 COMMISSIONER CHRISTMANN: I had made some notes
6 from over the past months from press articles, and it's
7 always referred to a little bit different: Percent of
8 right of way access, percent upon the proposed route or
9 of easements. I never knew exactly this kind of detail
10 of what we were talking about.

11 But in mid August it looked like -- now I'm
12 talking about the North Dakota numbers total. It looked
13 like it was around 35 percent. Mid October, two months
14 later, about 47 percent. Mid January, two months later,
15 up to 56 percent. So you're getting about another 5
16 percent a month or so. But now we're mid March and
17 we're at 62 percent. So I guess it's kind of staying
18 along there.

19 Do you expect any significant changes any time
20 soon? You mentioned the one in Dickey County.

21 THE WITNESS: Uh-huh.

22 COMMISSIONER CHRISTMANN: But do you think a lot
23 of signatures are close to being acquired or do you
24 think you've kind of hit your high bar or where do you
25 think you're at?

1 THE WITNESS: I certainly don't think we've hit
2 our high bar. Hard to define "a lot of signatures," but
3 I think part of the contributing factors there, without
4 sounding like I'm making excuses for my team, but we've
5 had an extraordinary amount of winter weather and we're
6 getting to areas that are hard to get to. And I don't
7 know what the snowfall was, but it's up there this year.
8 That's made it difficult and slowed things down. Also,
9 we're in a lot of areas that are agriculture-related in
10 terms of actual planting and harvest, and a lot of folks
11 in North Dakota leave during the winter. So that
12 creates a little bit of -- quite a bit of oscillation in
13 the numbers.

14 I think we're heading in a really good
15 direction. I think, by and large, the folks we visited
16 with in North Dakota that are willing to have a dialogue
17 with us, those conversations have been fruitful. I
18 don't sense a whole lot of opposition tied to our
19 conversations with landowners. So I think, by and
20 large, things will improve, but I'm also proud of our
21 effort so far.

22 COMMISSIONER CHRISTMANN: Then there's a company
23 that has done a lot of siting in North Dakota over the
24 years and has had, I think, pretty impressive track
25 record of getting their easements. And one of the

1 things that they have told us multiple times was that
2 their agreements with landowners call for increased
3 compensation if along the way they end up paying more
4 for similar land down the line in order to get the
5 easements. Do you have something like that? Or if you
6 have to increase your compensation, the ones who signed
7 early for less are just out of luck or -- or do you go
8 back and elevate those if they're similar land types?

9 THE WITNESS: We don't. We don't have that as
10 part of our program. There's a variety of reasons why
11 not. In my world, we call that "most favored nations."
12 Not all properties and not all impacts are equitable,
13 certainly at this scale. I mean, you've seen our maps.
14 We're spanning a whole -- a variety of properties. So
15 it's not normal in my experience to incorporate most
16 favored nations into easement acquisition. I think a
17 smaller scale or similar property types without a wide
18 variety, maybe.

19 But, again, the other problem is -- or issue
20 with that is that we've -- as Mr. Powell said, we need
21 to acquire over 2,000 miles of right of way. So if we
22 were to do that in North Dakota, we would need to do
23 that everywhere. And what that does in terms of -- you
24 know, with right of way being a pretty important path to
25 executing these types of projects, it is -- very much

1 slows it down because you're constantly having to go
2 back and write checks.

3 And the other problem is that -- and really the
4 main point that I made is that we're not crossing
5 equitable properties so there's a variety of properties
6 that we're crossing. And to pay everyone the same is
7 just -- it's not realistic for us.

8 COMMISSIONER CHRISTMANN: Well, I don't know
9 that they pay everyone the same. I think it's on
10 similar types of land. But I do think it -- it seems to
11 alleviate the problem for them of having multiple people
12 hold out knowing "If I can be the last one that they
13 desperately need, I'll really get a lot."

14 THE WITNESS: Yeah, I've seen that work both
15 ways in my experience. So I've seen that make a project
16 go fast, right? I've seen it make a project go to the
17 graveyard. So I've seen both sides of that.

18 COMMISSIONER CHRISTMANN: Okay. No other
19 questions.

20 ALJ HOGAN: Commissioner Haugen-Hoffart.

21 COMMISSIONER HAUGEN-HOFFART: I just have a
22 couple of questions. You talk about your team in North
23 Dakota working on land acquisition. How many do you
24 have working currently in North Dakota?

25 THE WITNESS: As far as the land acquisition

1 team without back office support, just the folks that
2 are out visiting with landowners --

3 COMMISSIONER HAUGEN-HOFFART: Yes.

4 THE WITNESS: -- it would be about eight people.

5 COMMISSIONER HAUGEN-HOFFART: Is it broken down
6 to areas or how is that team broken down?

7 THE WITNESS: Typically, we have them in areas
8 so that they can stay in the general area and know what
9 type of properties they're dealing with or maybe they're
10 from that area. Some of them bounce around based on
11 what our needs are.

12 COMMISSIONER HAUGEN-HOFFART: Okay. That's all
13 I had. Thank you.

14 ALJ HOGAN: Mr. Dawson.

15 SUBSTITUTE DECISIONMAKER DAWSON: I thought a
16 previous witness had said there were two population
17 areas that the pipeline went by. I see Bismarck. Is
18 there another population area?

19 THE WITNESS: I don't know what constitutes a
20 population area, honestly.

21 SUBSTITUTE DECISIONMAKER DAWSON: I mean -- like
22 a named town that I would recognize.

23 THE WITNESS: We get near a few towns. The --
24 what would fit the -- fit the bill for a populated area,
25 I'm not -- I'm not sure how that fits. Apologize. It's

1 just not my -- my wheelhouse.

2 SUBSTITUTE DECISIONMAKER DAWSON: Okay. And
3 where are you from?

4 THE WITNESS: I'm from Houston, Texas.

5 SUBSTITUTE DECISIONMAKER DAWSON: Okay. You
6 don't have a Texas accent.

7 THE WITNESS: Working on it.

8 SUBSTITUTE DECISIONMAKER DAWSON: Okay.

9 ALJ HOGAN: All right. Before I go around one
10 more time, I just want to note that it is 6:15. I know
11 we still have another witness to get through. We're
12 going to take a lunch break, and ideally I'd like to
13 start public testimony no later than 8, 8:15, just so
14 that we're kind of all generally aware of where we're at
15 time-wise. But I will ask if there's any additional
16 questions.

17 Mr. Bender, did you have any?

18 MR. BENDER: I have no further questions.

19 ALJ HOGAN: Mr. Pelham?

20 MR. PELHAM: I don't have any questions, but it
21 would be nice to get this marked as an exhibit for the
22 record.

23 ALJ HOGAN: Sure. Let's see. Exhibit 3?

24 Mr. Bakke, any additional questions?

25 MR. BAKKE: No.

1 ALJ HOGAN: Mr. Leibel?

2 MR. LEIBEL: No.

3 ALJ HOGAN: Mr. Pranis?

4 MR. PRANIS: No, Your Honor.

5 ALJ HOGAN: Any other Commission questions?

6 UNIDENTIFIED SPEAKER: The break is until when?

7 ALJ HOGAN: I haven't picked yet. Can we shoot
8 for 6:45? Enough? A half hour? Or do we want longer?

9 UNIDENTIFIED SPEAKER: It's enough.

10 ALJ HOGAN: Let's shoot for 6:45. So we will
11 take a lunch break and reconvene then.

12 (Recess)

13 ALJ HOGAN: We good up there? Good to go? All
14 right. We are going to get started.

15 Mr. Bender, do you want to call your final
16 witness?

17 MR. BENDER: Yes, Your Honor. Jon Schmidt.

18 ALJ HOGAN: All right. Mr. Schmidt, is your
19 microphone on there?

20 JON SCHMIDT: Yes.

21 ALJ HOGAN: Looks like it is. All right.

22 I'll have you start by stating your full name
23 and spelling your last name for the record.

24 JON SCHMIDT: Jon Schmidt, S-C-H-M-I-D-T.

25 ALJ HOGAN: And, Mr. Schmidt, were you in the

1 room earlier when I went through the penalties for
2 perjury?

3 JON SCHMIDT: No, I wasn't.

4 ALJ HOGAN: All right. Well, I'm required by
5 law to advise you on those before we get started.

6 Perjury is a Class C felony punishable by a
7 maximum fine of \$10,000, a maximum five years'
8 imprisonment, or both.

9 Do you understand what perjury is?

10 JON SCHMIDT: Yes.

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

14 JON SCHMIDT: Yes.

15 ALJ HOGAN: All right. Thank you.

16 Go ahead, Mr. Bender.

17 MR. BENDER: Thank you.

18 **JON SCHMIDT,**

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

21 DIRECT EXAMINATION

22 BY MR. BENDER:

23 Q. Jon, would you tell me by whom you're employed?

24 A. EXP Energy Services.

25 Q. And in what capacity?

1 A. I'm a vice president of environmental regulatory
2 services.

3 Q. Could you provide for us your educational
4 background and work experience?

5 A. I'll truncate it. I have a bachelor's,
6 master's, and Ph.D. in biological sciences.

7 Q. Okay. And work experience?

8 A. I've been employed since 1987, providing
9 regulatory services to governments, private sectors,
10 energy industry to help them get licensing and
11 permitting for proposed projects.

12 Q. Okay. And what's your role been with respect to
13 this project that's before the Commission today?

14 A. Summit hired our company to serve in a project
15 management role. There were several environmental firms
16 hired. They hired us to help them manage the
17 environmental work.

18 Q. I'm going to try to truncate the questions so
19 that you can have some shorter answers as well,
20 hopefully. Is a general description of the project
21 route from an environmental perspective contained in the
22 application?

23 A. Yes. Section 5 particularly breaks down the
24 land uses that are crossed. Biological, cultural
25 resource, and other resources are described in there.

1 Q. Okay.

2 ALJ HOGAN: Mr. Bender, can you pull the mic
3 closer?

4 MR. BENDER: Oh, I'm sorry. Thank you.

5 Q. Is the study area of the project described in
6 the application?

7 A. Yes.

8 Q. And are the field surveys, the area of the
9 project described in the --

10 A. Yes. From Section 5 through Section 9, all of
11 that's described. There's also three appendices that
12 have field reports and studies that were completed as
13 well.

14 Q. And can you discuss for us the approach that was
15 taken for the natural and cultural resource analysis of
16 the one-mile study area and the 300-foot-wide project
17 area -- corridor? Excuse me.

18 A. So we start -- when we started the project, we
19 pull existing public information. So this is mostly GIS
20 data layers for a variety of different resources. We
21 talk to the agencies, get data that they may have. We
22 also talk with the agencies to apprise them of the
23 project and get input from them. And then once we have
24 mapped all this information, we provide input back to
25 Summit construction and engineering with any

1 recommendations based on that analysis.

2 And then once a route is firmed up, we develop a
3 survey corridor. We call it "environmental survey
4 corridor." We basically survey 300-foot-wide corridor.
5 And the reason we do is it allows us to map the
6 resources in a 300-foot strip instead of just going out
7 and surveying a route. And that way, if the landowner
8 wants to shift the route on their property, we've
9 already surveyed the area. We don't have to go back
10 multiple times.

11 So that was kind of the process as going -- I
12 tell people it's like a funnel. You start with public
13 data and then you just kind of narrow down with
14 site-specific data as you get into the field.

15 Q. Let's talk a little bit about the Commission's
16 siting rules. And were there any exclusion areas?

17 A. There was one. There's critical habitat for the
18 piping plover at the Missouri River. That was
19 identified very early on. And we recommended a
20 horizontal directional drill to avoid that habitat.

21 Q. Were there any avoidance areas?

22 A. There were several. There's waterfowl -- wild
23 waterfowl production areas found in several of the
24 counties, four locations that are crossed. Other
25 witnesses have talked about residences within 500 feet.

1 There were also historical sites which are cultural
2 resources during the course of our surveys in that
3 300-foot corridor. I know I'm forgetting some others,
4 but there are a couple others that are mapped --

5 Q. There's some geologic unstable areas?

6 A. Geologically unstable areas. We used a variety
7 of information there to help identify potential karst
8 areas, floodplains, and landslide-susceptible areas.
9 And we use that information to feed into the engineering
10 as well.

11 Q. Have you had an opportunity to review the letter
12 that the Geological Survey filed with the Commission?

13 A. Yes. That information was, you know, actually
14 really well received. When we prepared the application
15 and filed it, they were in the process of converting
16 their lidar data into those maps and not all their maps
17 were finished. So now that they have it all done, we
18 can use that information in conjunction with the
19 analysis that was done with the USGS data.

20 And I have to point out that the USGS mapping
21 identified 1,600 acres of landslide area and the State
22 identified very -- you know, 14 locations but very few
23 acres.

24 But based on the USGS data, Summit went and
25 hired two firms, both geological expert firms. One does

1 geotechnical, one does geological engineering. And they
2 were actually out looking at all these areas. And now
3 that they have the State's analysis, they'll fold that
4 into the analysis. And they'll share that data back
5 with the State as well.

6 Q. And has Summit responded to the letter from the
7 GS --

8 A. Yes, they have. They called the state geologist
9 and also sent a response to them.

10 Q. And the essence of the response is Summit is
11 going to be spending more time with the Geologic Survey
12 to work out those issues?

13 A. Correct. And to provide them the results of the
14 analysis. And I assume as well some of the data they
15 collected that will be useful to the State.

16 Q. From a selection criteria standpoint, will there
17 be any significant adverse effects resulting from the
18 location, construction, and operation of the project?

19 A. No. Most of -- from a biological and cultural
20 resource standpoint, our direction we receive from
21 Summit that we worked with from the beginning was to
22 identify the areas in our surveys and to avoid. So, for
23 instance, for cultural resource surveys, most applicants
24 only survey certain areas. The company decided from day
25 one to do a hundred percent for cultural. And so by

1 doing that, we're identifying potential sites to avoid.
2 From a biological standpoint, we have reclamation
3 measures designed based on years of best management
4 practices to restore the habitats after the construction
5 has gone through.

6 Q. Were the policy criteria set forth in the
7 Commission's siting considered and utilized to the
8 extent possible by Summit in designing the proposed
9 project?

10 A. Yes. They're in Section 7, I believe.

11 Q. Okay. What other additional factors did the
12 Commission -- or did you take into consideration in
13 terms of siting this pipeline?

14 A. So there's -- Section 9 in the application
15 covers other considerations that the Commission
16 recommends that applicants look at. So those are
17 spelled out and identified there.

18 Q. Does the application take into consideration
19 some of the other surveys that were conducted for the
20 project?

21 A. Yes. It considers the field work that we did to
22 supplement the agency supplied data.

23 Q. What about cultural resources, paleontological
24 reports, and biological reports, are those included into
25 the --

1 A. Yeah. They're in Appendices 5, 6, and 7, I
2 believe. They're very large studies. So the cultural
3 resource study is -- starts with a class one study which
4 is basically looking at the existing records at the
5 SHPO's office. And we look at a two-mile-wide swath
6 centered on the route. When that's done, then we do
7 field work, to actually go in the field and look for
8 cultural resource sites.

9 What Summit did which is unique here is they
10 reached out to 62 tribes in the area, asked them if they
11 want to participate. We had eight tribes participate in
12 the field work. And they identified heritage sites.
13 These are sites that were important to the tribes.
14 They're not recorded as cultural resource sites by the
15 SHPO, but those individuals accompanied our cultural
16 resource crews and they helped identify resources to
17 protect.

18 From a biological standpoint, we did the same
19 thing. We put crews out there to use the Army Corps of
20 Engineers wetland delineation methodologies to identify
21 waters and wetlands of the U.S. and then U.S. Fish and
22 Wildlife protocols for endangered species.

23 Q. Let's step back a bit and talk a little bit
24 about the letter that was forwarded to the Commission
25 from the -- from the SHPO. Did you see that letter?

1 A. Yes. There's actually two letters. There was a
2 letter filed in November to Summit which identified some
3 inconsistencies in the phase -- in the first field
4 report. The second letter, I'm pretty sure was more in
5 frustration that the first letter hadn't been addressed
6 yet.

7 Summit has asked our company, EXP, to step in
8 and finish that report for the contractor who did the
9 work. There was inconsistencies between their maps,
10 their tables, and their text. And we were having them
11 do it, but now we've taken their field data and we'll
12 revise that report. It will be filed this month with
13 the SHPO. They have a 30-day review period. Once we've
14 gotten their comments on the revised report, then we can
15 file the addendum after that.

16 Q. Does the application contain any information
17 with respect to how Summit will minimize impacts to
18 wetlands and water bodies?

19 A. Yes. There's -- Appendix 3 contains an
20 environmental construction plan. That plan is based on
21 decades of best management practices. There's a lot of
22 things in there that FERC developed for their projects
23 that they regulate. So these best management practices
24 cover how to disturb the soil, restore the soil, and
25 then reclaim the areas. And so by doing that, we will

1 ensure that the wetlands that are crossed will be
2 restored and the water bodies will be returned to
3 pre-construction conditions.

4 Q. Are the findings of the wildlife surveys
5 discussed in the application?

6 A. Yes. There's a table of the listed species that
7 the U.S. Fish and Wildlife provided us with as well as
8 the survey reports which are in an appendix in the back
9 of the application.

10 Q. Based on the surveys that were conducted, are
11 there any long-term negative impacts to wildlife as a
12 result of this project?

13 A. I don't believe so. The -- as I indicated, the
14 key to projects such as this, and I've done tens of
15 thousands of pipelines in 36 years, there's lots of
16 studies done that compare before and after. There's
17 actually scientific literature. If the measures are
18 followed correctly in reclamation, the wetlands come
19 back. Of course the farmer gets to farm their property
20 again, but any pasture or hayfield is seeded to the
21 landowner's specification and allowed to come back --
22 come back as well. So there's really no long-term
23 impact to the habitats here.

24 Q. Did Summit conduct a tree and shrub inventory?

25 A. Not yet. Because the Commission requires us to

1 count every tree and every shrub, every piece of woody
2 vegetation, we want to wait until the route's fixed, and
3 then we'll do that pre-construction, provide the report
4 and the mitigation plan that go with it. So we're cued
5 up to do that, but we have to wait until the route's
6 fixed.

7 Q. This may have been covered by another witness,
8 but does Summit have a noxious weed management plan?

9 A. Yes, they do. It's in Appendix 2, this
10 application. We used the firm to prepare that plan, and
11 they consulted with the weed boards in every county, got
12 recommendations from them, and they built that into the
13 plan that will be followed.

14 Q. Other than the certificate and permit that are
15 required by the Commission for this project, are there
16 any other permits or approvals which are required?

17 A. Yes. So we have several federal permits and we
18 have state permits to acquire. We filed an application
19 to the Corps of Engineers for 408 Approval across the
20 Missouri River, they have some civil structure there, as
21 well as nationwide Permit 58 for the entire line. We
22 also have U.S. Fish and Wildlife Section 17 consultation
23 that they have to do with the Corps of Engineers because
24 it's a federal action. And then we'll have state
25 permits. We have permits from DEQ. We have general

1 permits for construction storm water and temporary water
2 discharges that we have to get. We'll get those filed
3 closer to construction.

4 Q. And is a list of those additional --

5 A. Yeah. In Table 6, I believe, in the
6 application.

7 MR. BENDER: Your Honor, I don't have any other
8 questions.

9 ALJ HOGAN: Mr. Pelham, any questions?

10 MR. PELHAM: Thank you.

11 CROSS EXAMINATION

12 BY MR. PELHAM:

13 Q. Good afternoon, Mr. Schmidt. Any abandoned
14 mines on the proposed route?

15 A. No. The nearest one, I think, is 1,200 feet
16 away.

17 Q. As far as the SHPO letter from March 1st, 2023,
18 that was recently filed with the Commission, as I
19 understand your testimony, there was some field data
20 that was -- could you explain that a little bit more?
21 I'm not sure I understood.

22 A. So the report that's filed is a -- they call it
23 a Class III survey report. And in it you describe where
24 you surveyed, what you found, and then you have site
25 forms you fill in for each site that you found. And

1 then you have extensive mapping. It's really detailed
2 mapping.

3 And I believe -- the archaeologist that works
4 for me knows more than I do, but I believe there was
5 inconsistencies between the tables and the report and
6 the maps and the forms. So the first letter asked a
7 whole bunch of clarification questions. That contractor
8 didn't respond. And I think the March 1st letter was
9 "Hey, we still haven't seen this yet."

10 Q. Has a class three been completed on the project,
11 though?

12 A. No. We can't complete surveys until we have
13 access to every property.

14 Q. I see. So as far as the completion of class
15 three, that SHPO won't be able to offer any concurrence
16 letter until that is completed. Is that fair to say?

17 A. That's fair to say, yes.

18 Q. Any estimation on completion of class three?

19 A. I'm sorry?

20 Q. Estimation as to time of completion.

21 A. When we have access, we'll have crews out there.
22 Hopefully this summer.

23 Q. As far as the letter from the state geologist
24 and the additional information provided, I think you
25 testified that that's being reviewed. When do you

1 estimate results of that further investigation will be
2 provided to the Commission?

3 A. I know the field work that Summit has undertaken
4 is still underway so I can't say when that will be
5 completed, but we can share the data we have with them
6 as soon as, you know, next week. They have started that
7 dialogue but we just have to connect the -- the other
8 firms that are working for Summit collecting similar
9 information so they can all work together.

10 Q. The centerline on the maps provided in the
11 materials by the company, it appears that the
12 environmental survey wasn't -- is offset from the
13 centerline of the proposed line. Are you able to offer
14 any explanation as to why that is?

15 A. Which maps are you looking at?

16 Q. Well, in the application.

17 A. The Appendix 1 maps?

18 Q. Right. They -- they're off center, it appears,
19 at certain locations. And we're just wondering why that
20 was.

21 A. Well, I know if we're co-located with an
22 existing utility or some kind of feature, we would shift
23 the corridor accordingly to the centerline, may look
24 like it's closer to that, whatever that feature is, just
25 because we wouldn't be surveying both sides of the road

1 or doing the work. We'd stick to that one side. So
2 that might be the reason.

3 Q. The field surveys that were done, are those
4 300 feet?

5 A. Correct. In some places it's wider. For HDDs
6 and other work spaces, we have to go out a little
7 further.

8 Q. I believe there's correspondence from the Long
9 Lake Wildlife Refuge indicating that the proposed line
10 goes about a half mile into a grassland easement. Do
11 you know if that has been rerouted?

12 A. From what I understand, we don't go through any
13 grassland easements at this point so I would assume yes.

14 Q. Tewaukon National Wildlife Refuge, impacts to
15 the Fish and Wildlife Service easements, do you know if
16 that has been avoided?

17 A. We do cross through some wetland conservation
18 easements and we worked with the service. We've avoided
19 the wetlands that are found on those easements.

20 Q. There's a concern indicated in an email from
21 North Dakota Game and Fish related to native prairie and
22 avoidance. How much native prairie are we talking about
23 on this proposed project?

24 A. I don't have any numbers with me. That's
25 something we can certainly look up and file with you.

1 It's a very small number. Most prairie is overseeded
2 for grazing so it wouldn't be considered pristine native
3 prairie.

4 Q. That same email in Appendix 8, it's a
5 December 7, '21 email, 2021, indicates that the proposed
6 line crosses some fisheries. Game and Fish requested
7 that stream be directionally bored, alternatively
8 avoiding construction between April 1st -- April 15th
9 and June 1st. Do you know what is being done as to
10 those fisheries where the proposed line would cross?

11 A. I'd have to see the list of streams, but we do
12 have a complete table of all the crossings and what the
13 method is so...

14 Q. So Missouri River, we know, is proposed to be
15 directionally bored, directionally drilled. Square
16 Butte?

17 A. I can't.

18 Q. Okay.

19 A. It's a lot of miles.

20 Q. Would it help if you opened up to Appendix 8 and
21 took a look at the email from Game and Fish? The pages
22 aren't numbered, however, so it gets a little bit tricky
23 because it's just been provided in the materials from
24 agencies.

25 A. Actually --

1 Q. It's about in the middle of Exhibit 8. It's the
2 best I can do. It's a Tuesday, December 7, 2021, email
3 of John Schumacher, from John Schumacher to Marsha
4 Olson.

5 "The pipeline route crosses a number of
6 classified fisheries, including Missouri River and
7 Square Butte, Apple and Beaver Creeks. We ask that
8 these streams be crossed by directional boring to
9 protect the resource. If this method is not feasible,
10 construction should not take place within the waterway
11 between April 15th and June 1st. Controls should be
12 implemented to minimize erosion and sedimentation."

13 So my question is really, is -- is that going to
14 be addressed by the company?

15 A. Yeah. Yes. Sorry. It would be. I can't find
16 the email, but it might be easier for me to go into
17 Appendix 7, see if there's the table of all the
18 crossings in there.

19 Q. And we can address it at another hearing too if
20 we have that luxury here.

21 MR. PELHAM: I don't have any other questions
22 for you, sir. Thank you.

23 ALJ HOGAN: Mr. Schock, any questions?

24 MR. SCHOCK: Just a couple real quick ones.
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CROSS EXAMINATION

BY MR. SCHOCK:

Q. Can you tell me what corridor had on-site surveys completed?

A. I don't have that number in front of me, no.

Q. Would it be similar to the amount of easements in place, slightly less, potentially?

A. It could be. Some people gave permission to survey but didn't sign an easement so... But it should be comparable, yeah.

Q. And so the actual surveys that were completed, what is the survey spacing that was used for those surveys? And by "spacing," what I mean is you're not having one person look at a 500 or a 300-foot --

A. Oh, I see.

Q. -- corridor by themselves. So how far apart were those surveying parties spaced apart? And is it similar -- because there's different types of surveys. There's environmental. There's --

A. So it depends on the resource being surveyed. For cultural resources, the SHPO dictates a spacing, and don't quote me, but it's on the matter of feet. So the crews are like six people that cover a 300-foot-wide swath. If we're doing surveys for species, it would depend on whether it's a plant or an animal and it

1 dictates the crew size there. Wetlands and streams are
2 done by about a four-person crew. Those are usually
3 mapped ahead of time and we're going out to confirm the
4 boundaries with GPS. Paleontological surveys haven't
5 taken place yet. Those would be specific locations. I
6 think that covers it. So it varies by discipline,
7 basically.

8 Q. And who specifies those spacings?

9 A. Usually the agencies and the methodology. So
10 any endangered species surveys that we do, the Fish and
11 Wildlife approve the methodology so they dictate that.
12 For cultural resources, the SHPO's office does.

13 MR. SCHOCK: Okay. That's all the questions I
14 have. Thank you.

15 ALJ HOGAN: Mr. Bakke.

16 CROSS EXAMINATION

17 BY MR. BAKKE:

18 Q. Mr. Schmidt, a few follow-up questions. First
19 of all, did you or your company get involved in any way
20 in analyzing which would be proper locations to cross
21 under the Missouri River with the pipe?

22 A. No. I mean, we started the work given the
23 route.

24 Q. Okay. So the only location where you considered
25 in terms of these issues you've addressed, cultural

1 sites, some of these other things, would have been the
2 location that's actually been selected by Summit and is
3 being requested from the PSC?

4 A. Yes. And every time they came to us with a
5 variation or a change, we would analyze that and provide
6 that.

7 Q. Okay. So you're not telling the PSC here today
8 that there aren't other locations where the pipeline, if
9 it was moved, could not go underneath the Missouri River
10 because of cultural site issues or concerns?

11 A. I didn't examine it so I can't give an answer
12 either way. I mean, you just look at the maps of the
13 Missouri River and the west side, the north -- northeast
14 side of Bismarck, the west side of the river, that
15 topography lends itself to cultural resource. There's a
16 lot of -- the tribes that accompanied our crews
17 identified a lot of heritage sites in that area.

18 Q. And what area was that?

19 A. On the west side of the river north of Bismarck
20 along our corridor.

21 Q. Okay. And so do you know where those possible
22 cultural sites are --

23 A. No.

24 Q. -- in relation to where Summit has requested the
25 pipeline to be installed?

1 A. Oh, yeah. Where we have permission, we surveyed
2 there.

3 Q. Right. But the ones that you talked about that
4 they generally described, did you go out in those areas
5 to see --

6 A. No.

7 Q. -- whether or not there were, in fact, any
8 cultural sites on the west side of the river?

9 A. No. But you -- we did a -- we did a record
10 search a mile on either side of the route, and it did
11 identify sites up to the north.

12 Q. Okay.

13 A. Quite a few.

14 Q. And that was just a mile --

15 A. In the SHPO's records, yeah.

16 Q. Okay. Just a mile to the north of the current
17 location; correct?

18 A. Correct.

19 Q. That's the only area you looked at?

20 A. Correct.

21 Q. Okay. In terms of this critical habitat for the
22 piping plover, was that a factor in determining, to your
23 knowledge, the crossing location for the Missouri River?

24 A. Insomuch that we knew the Fish and Wildlife
25 would approve the crossing if it was an HDD. So it had

1 to be a location where the HDD was feasible.

2 Q. But what I'm asking about is there are any areas
3 that you're aware of where crossing was ruled out by
4 your company or anybody else, that crossing under the
5 Missouri River could not occur during -- due to the
6 presence of piping plovers in some certain location?

7 A. Not unless they couldn't cross it with an HDD.

8 Q. You talked about geologically unstable areas.
9 Were any of those along the Missouri River?

10 A. No. They were mostly river cuts. So most
11 plains, streams, and rivers in the Plain States have
12 cutbank. A lot of that they identified was at those.
13 And then there were some slope areas, I can't remember
14 which county it was, where they identified those. But
15 the USGS identified actually more areas than the State
16 did so we're trying to meld the two studies together.

17 Q. But this was not in the -- on the Missouri
18 River?

19 A. No.

20 Q. Other --

21 A. Other streams and rivers, yeah.

22 Q. Okay. You mentioned reclamation as being an
23 area that your company looked at for Summit; is that
24 correct?

25 A. Yes. We have a firm we use called Westech

1 Environmental Services.

2 Q. Okay. So what happened if this -- if this
3 pipeline starts, and then after a number of years, for
4 economic or other reasons, the pipeline shuts down, who
5 pays to reclaim the landowner's land?

6 A. I can't answer that.

7 Q. Is there any provision been made by Summit to
8 compensate the landowners if the pipeline shuts down?

9 A. My -- I can't answer that.

10 Q. Not to your knowledge?

11 A. Not to my knowledge, but it's way outside my
12 wheelhouse.

13 MR. BAKKE: I have no further questions.

14 ALJ HOGAN: Mr. Leibel, any questions?

15 MR. LEIBEL: I have no questions for this
16 witness.

17 ALJ HOGAN: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: When you talked
19 earlier about native prairie, I think you used the word
20 "pristine" or something along those lines. And that's
21 not what I'm thinking of when I talk about native
22 prairie on something like this, because I think most of
23 us from the ranching industry will acknowledge that most
24 of North Dakota's native grasslands have been infested
25 by essentially Kentucky bluegrass. It's -- it's

1 everywhere.

2 THE WITNESS: (Indiscernible).

3 COMMISSIONER CHRISTMANN: Yeah, it's not
4 pristine but it is unbroken and has still a significant
5 and extraordinarily valuable amount of those species of
6 grasses and forbs. And so maybe "unbroken" is the
7 better word to be used here.

8 I do want to know along the way, maybe at the
9 next hearing, how much of the land is that, but I also
10 want to know, when you talked to landowners, and I think
11 you said something along the line of seed it back to
12 varieties of their approval -- I come from the ranching
13 industry. It's what I did all my life before this.
14 There's a whole lot of us that don't know of these
15 various species of grasses and forbs that are out there.
16 We know it's good and helpful. We can't name them. And
17 I learned a lot of this stuff at the PSC working in coal
18 mine reclamation. But will you also commit to working
19 with the county NRCS --

20 THE WITNESS: Yes.

21 COMMISSIONER CHRISTMANN: -- on a species mix
22 for these unbroken grasslands? Because it is asking a
23 lot of the ranchers to know all these species --

24 THE WITNESS: Absolutely.

25 COMMISSIONER CHRISTMANN: -- when you throw the

1 question out across the table.

2 THE WITNESS: Yep. And when I say landowners,
3 we usually go in with a list that the NRCS recommends
4 but we make sure the landowners -- because some of them
5 have their own opinions as well.

6 COMMISSIONER CHRISTMANN: That's appreciated.
7 And I want to get to public testimony so I'm just going
8 to re-emphasize my understanding of something earlier.
9 I had a question on the reason why some of the wetlands
10 were open cut and some were bored in a little more
11 detail. Let's be prepared to address that in the
12 future.

13 THE WITNESS: Sure. The Army Corps of Engineers
14 issues general permits for activities they deem
15 environmentally benign. And some of the nationwide
16 permits are for utilities, pipelines, water pipelines,
17 gas lines, oil lines. Because in their decades of
18 permitting, they have found that open cutting a wetland
19 crossing adds no long-term detrimental impact. And so a
20 lot of cases it will be expedient to get in and out of a
21 wetland with an open cut as it would be to set up a
22 bore, dig the bell holes on either side or set up the
23 rig. You still got to have the spread get through
24 somehow. And so sometimes they have to have a bore
25 drilled through the wetland anyway. So what -- open

1 cutting wetlands is a -- for decades of experience,
2 that's been the construction methodology.

3 COMMISSIONER CHRISTMANN: Okay.

4 THE WITNESS: If we do a bore, it's usually in
5 conjunction with there may be a road crossing there.
6 There may be some other feature that has to be crossed
7 with the bore and so the wetland just gets the benefit
8 of it being next to that feature.

9 COMMISSIONER CHRISTMANN: No other questions.

10 ALJ HOGAN: Commissioner Haugen-Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: I just have one or
12 maybe two. Throughout this application, it talks about
13 working with historical sites and all that, everything
14 that you have testified to. Are you working with this
15 project and the landowners prior to construction, if
16 approved, and after as far as the restoration, like
17 identifying things that are on the land and working,
18 saying, you know, with fencing, whatever?

19 THE WITNESS: Correct.

20 COMMISSIONER HAUGEN-HOFFART: You're the one?
21 And you're also going to be there afterwards as far as,
22 if permitted, the reclamation of the land?

23 THE WITNESS: Correct. I believe Jimmy -- or
24 Mr. Powell's indicated that they'll be there, as soon as
25 the landowner brings up an issue, they'll come back and

1 address whatever issue that may be on the property.

2 COMMISSIONER HAUGEN-HOFFART: Is it you or is it
3 a team of individuals?

4 THE WITNESS: They'd have operation staff who
5 would hire contractors to come in. If it needs to be
6 reseeded, they come in and reseed it. If it needs to be
7 graded, they'd come in with equipment and regrade it.
8 Whatever the issue is, they would contract with whatever
9 is needed to do that work.

10 COMMISSIONER HAUGEN-HOFFART: They have the
11 expertise like that you're talking about --

12 THE WITNESS: Yes.

13 COMMISSIONER HAUGEN-HOFFART: -- or what Mr. --
14 or Commissioner Christmann referenced?

15 THE WITNESS: Right.

16 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

17 ALJ HOGAN: Mr. Dawson.

18 SUBSTITUTE DECISIONMAKER DAWSON: Are heritage
19 sites treated the same as other cultural resource sites
20 for the route of the pipeline?

21 THE WITNESS: So we -- to date, we have avoided
22 all the heritage sites that the tribes have identified.
23 So to the extent that we can, we are.

24 SUBSTITUTE DECISIONMAKER DAWSON: Are those
25 noted on the maps that we'll get --

1 THE WITNESS: So they're --

2 SUBSTITUTE DECISIONMAKER DAWSON: -- sites?

3 THE WITNESS: No. Because the tribes do not
4 want us to publish that information so... The SHPO will
5 see it but I -- I can't -- I don't know how it's filed
6 to you guys so... It's not for the public.

7 SUBSTITUTE DECISIONMAKER DAWSON: Yes, I
8 understand. And so SHPO, when they get their map, does
9 it differentiate heritage sites from other cultural --

10 THE WITNESS: I believe so, yes.

11 SUBSTITUTE DECISIONMAKER DAWSON: Thank you. No
12 further questions.

13 ALJ HOGAN: Mr. Bender, any redirect?

14 MR. BENDER: No redirect.

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

16 Mr. Schock?

17 Mr. Bakke?

18 MR. BAKKE: No, Your Honor.

19 ALJ HOGAN: Mr. Leibel?

20 MR. LEIBEL: No, Your Honor.

21 ALJ HOGAN: All right. Well, thank you, Mr.
22 Schmidt.

23 That concludes Summit's witnesses. Correct,
24 Mr. Bender?

25 MR. BENDER: That's correct.

1 ALJ HOGAN: All right. We are going to move to
2 the public testimony portion of our hearing. And I know
3 we've had several people that have, unfortunately, had
4 to leave already. So can I get a show of hands of the
5 amount of people that want to testify just so I have an
6 idea of how many we have? Okay. Thank you.

7 In order to testify, I'm going to have you come
8 forward and sit at the table like all the other
9 witnesses have. You will be sworn in and subject to
10 questions from all the parties, just so you're aware
11 before you come up here. If you're a landowner, I'd ask
12 that you please specify where your land is. If you're
13 representing a group, if you could identify the group
14 you represent, that would be great.

15 Just because we do have a lot of people that
16 wish to provide testimony and I -- the Commission wants
17 to hear from everybody, I'd ask that you generally try
18 to keep your testimony to around five minutes, and then
19 I'll maybe give you a signal if you're getting close to
20 that, just a visual cue to try to wrap it up.

21 Seems like we get through public testimony a
22 little bit quicker if we go through certain groups so
23 I'll just kind of give a general framework of how I'm
24 going to call people to come to testify. First, if
25 there's any officials representing government agencies

1 or entities, then landowners within the pipeline route
2 subject to this hearing, county residents opposed,
3 county residents for, groups, people representing groups
4 opposed to the pipeline, people representing groups who
5 are for the pipeline, and then more general categories
6 if we haven't covered everybody, interested persons for
7 and opposed, and then any additional testimony.

8 Also, please keep in mind that you're providing
9 testimony in this hearing and this is not an opportunity
10 to ask questions of any witnesses, parties, or the
11 commissioners. You'll be making a statement or
12 providing comments for the Commission's consideration.

13 Testimony should be factual, to the point, and
14 it would be appreciated if it's not redundant. So if
15 somebody else has already expressed a similar concern,
16 we'd appreciate it if you just indicate that you agree
17 or have the same concerns.

18 All right. I think that's it. So I'll start by
19 asking if there's any officials representing government
20 agencies or entities that wish to provide testimony.

21 JEFF MAGRUM: I have a handout. Can I give this
22 out?

23 ALJ HOGAN: Sure.

24 JEFF MAGRUM: How many do I need?

25 ALJ HOGAN: Eight.

1 (Pause)

2 ALJ HOGAN: All right. I'll have you start by
3 stating your full name and spelling your last name for
4 the record.

5 JEFF MAGRUM: Jeffery J. Magrum. J-E-F-F-R-E-Y,
6 J, M-A-G-R-U-M.

7 ALJ HOGAN: And Senator Magrum, were you in the
8 room when I went through the penalties for perjury?

9 JEFF MAGRUM: Yes, I was.

10 ALJ HOGAN: And you understand what perjury is?

11 JEFF MAGRUM: I do.

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

15 JEFF MAGRUM: Yes, I do.

16 ALJ HOGAN: All right. Thank you. Go ahead.

17 **JEFF MAGRUM,**

18 being first duly sworn, testified as follows:

19 JEFF MAGRUM: Okay. Hello, Commissioners. I
20 might read this to you. It's not very long. But for
21 the record, I'm Senator Jeff Magrum, serving District 8,
22 which is rural Burleigh County including Wilton,
23 Baldwin, Hoge Island, Lincoln, Menoken, Moffit, as well
24 as all of Emmons County including Kintyre, Braddock,
25 Hazelton, Temvik, Linton, Strasburg, Hague, Westfield,

1 and Hull. There's over 60 miles of the proposed carbon
2 pipeline running through District 8.

3 I have been at several public meetings beginning
4 approximately one and a half years ago. I was surprised
5 at the threat of the use of eminent domain as an option
6 that the representatives of Summit Carbon Solutions
7 thought that they had.

8 The letter to self-declare themselves as common
9 carrier was filed with the Public Service Commission on
10 June 24th of '22, and that was many months after the
11 initial threats against my constituents. And then
12 exactly two months later, on August 24th, Summit Carbon
13 Solutions filed lawsuits against my constituents to
14 invade their land for surveys.

15 And those documents are further back where they
16 filed the letter, which is disputable, but I guess we
17 didn't get that change in the legislature so -- but I do
18 have that attached. These cases, these survey cases,
19 will be heard this month.

20 Summit Carbon Solutions has already cost our
21 constituents in a big way as well as all the civil
22 unrest that has already been a big problem, which it is
23 frustrating as a senator of an area when people are
24 reaching out to me because they're being harassed by a
25 company to sign leases and then they -- they feel like

1 they're being threatened with eminent domain. So it's
2 very frustrating. And so I feel like I have to defend
3 the people that have elected me.

4 So seeing many gaps in the law that Summit
5 Carbon Solutions has identified and is using to their
6 advantage, I introduced legislation in the current
7 legislative assembly to address some of these issues.
8 So, for example, the self-declaring of common carrier
9 status was one of the issues that many acknowledged as
10 an issue that needs to be fixed legislatively.
11 Unfortunately, the bill was defeated because an all-out
12 invasion of lobbyists in the capitol with the goal of
13 defeating the bill.

14 I also introduced a bill to require 85 percent
15 participation by landowners in a carbon pipeline project
16 by -- it was by -- it was -- they would have to get
17 85 percent of the landowners at least before they could
18 even apply for a hearing, and that was -- and that would
19 allow them to use eminent domain after that. It could
20 be used on the pipeline route. And industry testified
21 that 90 percent participation is generally achieved
22 relatively easy.

23 The two bills that have passed to the House from
24 the Senate, one is the survey bill and that will be
25 heard Friday in the House of Representatives. And what

1 that does is require written permission to survey on
2 people's land, which right now, if it's considered
3 public use, there's an old 1895 law in effect that they
4 don't have to ask permission. So that is being
5 addressed. And that's -- that's to do with eminent
6 domain proceedings. And then -- and the reason I
7 brought that bill is because of the trespassing by the
8 Summit Carbon Solutions surveyors on private land. They
9 were actually asked to leave private land by some of the
10 landowners that are my constituents. So they were using
11 this law to their benefit or to their advantage.

12 Emmons and Burleigh counties acting to protect
13 their citizens and their land have been very active in
14 updating the ordinances in realization that the State
15 wasn't going to look out for their people as to carbon
16 pipelines. I watch Emmons County as well as Burleigh
17 County public hearings, and they were very well
18 attended, well run, and the testimony was almost
19 entirely in favor of the updates to their ordinances to
20 protect landowners' rights.

21 Recently, at a hearing we had in the Senate, a
22 Public Service commissioner attended the committee
23 hearing and stated that local governments should be
24 allowed to make local decisions for local people because
25 they are closer to the people.

1 I urge you, the Public Service Commissioners, to
2 honor the county commissioners that represent the people
3 of their respective counties and the people of District
4 8, and if you site this proposed pipeline, please keep
5 the county ordinances in the forefront of your decision
6 or just reject the siting request entirely.

7 And I do want to say one thing with the -- the
8 private property protection bills that I had. The
9 committee hearings were very well attended and there was
10 not a one individual from the east side of the river
11 that came in opposition to the bills. There was one
12 testimony from the Gwinner area that was for the
13 pipeline. But I mean we've been involved in wind
14 developments where you'll always have one side wants the
15 wind development, the other side doesn't, and you have
16 this push and pull between the two sides. But this time
17 we never had a one person. That was very amazing to me,
18 that even the people that signed the contracts never
19 came in and said, "Hey, don't mess with my contract, I
20 want this."

21 As a matter of fact, I've had some of my
22 constituents reach out to me that actually signed these
23 easements and they would like to get out of them.
24 They're hoping that this pipeline doesn't even get built
25 so that they don't have to deal with it because they

1 realize they -- they probably shouldn't have signed up.
2 So that's what I'm hearing from many of my people so...

3 And the lawsuits have been filed, and I have
4 proof of that because I included that in this little
5 packet. There's quite a few lawsuits for surveying
6 alone so -- I mean, this company is not afraid to file
7 lawsuits against our people. I thought they could have
8 worked a little harder on trying to sign the people up.
9 And initially it was disappointing to see the approach.

10 Because I was a county commissioner in Emmons
11 when the Dakota Access Pipeline was built, and the
12 people were very welcoming of that pipeline. And they
13 had -- actually, the State had shut them down from the
14 beginning of the project, and us as county commissioners
15 found them an access route to the river where they
16 started on the east side of the Missouri heading to the
17 east. They couldn't even get to their take-off site in
18 the spring because the roads were soft. And our county
19 literally gave them access on one of our county gravel
20 roads to get to the worksite to get going.

21 So it was very well, but it was a lot to do with
22 the approach, I think, beginning -- at the beginning.
23 People were approached in a respectful way and I think
24 that made a big difference. I know it did. Whether or
25 not you believe in carbon capture or anything, the way

1 the people -- our people were treated, and it was very
2 wrong from what everybody's told me, then -- I mean,
3 that's a big part of the problem. And so if they treat
4 you that way right away, I mean, do you really want them
5 on your land for 99 years? You're going to have to deal
6 with them forever. Your children are going to have to
7 deal with them. Your grandchildren. So you don't want
8 to put a curse on your family by signing them up for a
9 measly amount of money and have to deal with this
10 forever.

11 So I did include the letter that has to be filed
12 with you folks, and I know you know how it works, but
13 it's disappointing that they can just file a letter and
14 claim to have common carrier status.

15 And so -- and then I did include, one of my
16 constituents gave this letter from Summit Carbon
17 Solutions' lawyer with the survey law that they said I
18 could share with everybody. And that was exactly two
19 months after they claimed to be a common carrier. And I
20 think you may have seen this map where it shows in the
21 east side of Bismarck and north of Bismarck the 911
22 addresses, how the pipe runs so near all these homes.

23 And then I did include the declaration of rights
24 and why I'm so interested in protecting landowner
25 rights, because I took the oath of office, as many of us

1 did, but I always have to cite this to people so they
2 understand that I -- I -- my oath of office is for the
3 Federal Constitution as well as the State, and all of us
4 are -- is. And it starts out, All individuals are by
5 nature equally free and independent to have certain
6 unalienable rights, among which are those of enjoying
7 and defending life, liberty, and acquiring and
8 possessing and protecting property and reputation,
9 pursuing and obtaining safety and happiness. And then
10 it goes on to say, And to keep and bear arms for the
11 defense of their person, family, property, and the
12 state, and for lawful hunting, recreation, and other
13 lawful purposes. And it ends with, Which shall not be
14 infringed.

15 So I mean, that's pretty -- pretty plain there
16 that property rights shall not be infringed, as well as
17 all the other rights.

18 And then on the back of that I did put the
19 current law which is what I was trying to change where
20 it says under common pipeline carriers, the definition
21 of common pipeline carriers, under 4: "Made a common
22 carrier by or under the terms of a contract with or in
23 pursuance of the laws of the United States, is a common
24 carrier and is subject to the provisions of this chapter
25 as a common pipeline carrier."

1 But then if you go to the Constitution again,
2 Section 16 on the way back, and it says "Private
3 property shall not be taken or damaged for public use
4 without just compensation having first been made to, or
5 paid into court for the owner, unless the owner chooses
6 to accept annual payments as may be provided for by law.
7 No right of way shall be appropriated to the use of any
8 corporation until full compensation therefor be first
9 made in money or ascertained and paid into court for the
10 owner, unless the owner chooses annual payments as may
11 be provided by law, irrespective of any benefit from any
12 improvement proposed by such corporation. Compensation
13 shall be ascertained by a jury, unless a jury be waived.
14 When the state or any of its departments, agencies or
15 political subdivisions seeks to acquire right of way, it
16 may take possession upon making an offer to purchase and
17 by depositing the amount of such offer with the clerk of
18 the district court of the county wherein the right of
19 way is located. The clerk shall immediately notify the
20 owner of such deposit. The owner may thereupon appeal
21 to the court in the manner provided by law, and may have
22 a jury trial, unless a jury trial be waived, to
23 determine the damages, which damages the owner may
24 choose to accept in annual payments as may be provided
25 for by law. Annual payments shall not be subject to

1 escalator clauses but may be supplemented by interest
2 earned."

3 Then the important part is next. "For purposes
4 of this section, a public use or a public purpose does
5 not include public benefits of economic development,
6 including an increase in tax base, tax revenue,
7 employment, or general economic health. Private
8 property shall not be taken for the use of, or ownership
9 by, any private individual or entity, unless that
10 property is necessary for conducting a common carrier or
11 utility business."

12 It's a bit confusing. So they're claiming to be
13 a common carrier, but they don't qualify as a common
14 carrier other than sending you as the Public Service
15 Commission a letter that says they're a common carrier.
16 They haven't proven that they're a common carrier, but
17 yet they're filing lawsuits against our constituents for
18 surveying. The whole thing doesn't make any sense.

19 So I think they need to prove they're a common
20 carrier. And I don't know how they're going to do that
21 because they aren't a common carrier by definition of
22 this law. That's my interpretation. I'm no expert but,
23 unfortunately, we always have to go to judges for that.
24 But, hopefully, you folks will take that into
25 consideration when you make your decision.

1 I'm open for any questions.

2 ALJ HOGAN: All right. Mr. Bender, any
3 questions?

4 MR. BENDER: No questions.

5 ALJ HOGAN: Mr. Pelham?

6 MR. PELHAM: No questions.

7 UNIDENTIFIED SPEAKER: No questions.

8 ALJ HOGAN: Mr. Bakke?

9 MR. BAKKE: Just briefly.

10 Can you tell the commissioners approximately how
11 many of your constituents have been threatened with
12 eminent domain by Summit.

13 JEFF MAGRUM: Well, this is the way it works.
14 They ask -- Mr. Bakke, do I have to address like we do
15 in the legislature?

16 ALJ HOGAN: No.

17 JEFF MAGRUM: Okay. So what happens is they ask
18 what if they don't sign up, and then the comments are
19 "Well, we can use eminent domain," is what they've told
20 me. And I've seen it myself at one of the public
21 meetings. And I don't have a number, Mr. Bakke, if
22 there's -- I mean, probably half a dozen have told me
23 that in person.

24 And I seen it at one of the public hearings.
25 The first one they had at the golf course over here in

1 Bismarck, one of the guys asked him, "Hey, what if we
2 don't want to sign up?" And I was confused because I
3 thought the right answer would have been "Well, we're
4 going to work with the landowners and do whatever we can
5 to get this thing built." Instead, the guy turns around
6 and says, "Well, we have this tool called eminent
7 domain." I'm like "What the heck are you doing?" I
8 mean, why would you threaten that right away off the
9 bat? That was way at the beginning. So it was
10 disappointing. Disappointing because I think the North
11 Dakota people are --

12 MR. BAKKE: And, Mr. Magrum, did Summit offer to
13 pay any attorney's fees and costs to your constituents
14 who are being sued by Summit to pursue surveys on their
15 properties, to your knowledge?

16 JEFF MAGRUM: No. No, sir. I haven't heard any
17 of that.

18 MR. BAKKE: Did your constituents who were
19 threatened with eminent domain feel intimidated by that
20 based on what they told you and how they reacted?

21 JEFF MAGRUM: Yes.

22 MR. BAKKE: Are some of these people who have
23 limited financial means who would have an ability to
24 fight a multibillion dollar company like Summit?

25 JEFF MAGRUM: Yes, absolutely. Yeah, they put

1 the scare in them, some of them.

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

3 ALJ HOGAN: Mr. Leibel, any questions?

4 MR. LEIBEL: I have no questions.

5 ALJ HOGAN: Any questions from the
6 commissioners?

7 Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: In the -- in your
9 document here, you have this long list of, I guess,
10 people that are involved in court proceedings and, on
11 the far right-hand column, the type of case. Some of
12 them are "other civil" and others are
13 "condemnation/ eminent domain." What does "other civil"
14 mean?

15 JEFF MAGRUM: I'm not sure, Commissioner
16 Christmann.

17 COMMISSIONER CHRISTMANN: Okay. And then the --
18 when -- the people you've talked to who have talked
19 about -- I think I've heard you refer to it as being
20 sued and, I suppose, the eminent domain thing, I'm
21 wanting to distinguish between when, as this letter that
22 you had that Mr. Bender signed to one of your
23 constituents, that was for survey access. Have you --
24 have you had reports or seen evidence of where they've
25 used eminent domain to get the pipeline easements or is

1 it at this point still about survey access?

2 JEFF MAGRUM: Yeah, Commissioner Christmann,
3 it's about survey access at this point. That's what
4 I've heard.

5 COMMISSIONER CHRISTMANN: Okay.

6 JEFF MAGRUM: That's the -- the information I
7 have here. So I don't know a lot more. I did listen to
8 the initial proceedings where Judge Jon Jensen, Chief
9 Justice Jon Jensen, had put Judge Narum in charge of
10 these cases, and they -- I listened in on -- to the case
11 the day that -- the day they took up the hearing, and
12 then he postponed it into March.

13 COMMISSIONER CHRISTMANN: Okay.

14 JEFF MAGRUM: Because of input from the lawyers
15 or -- I don't remember if that was an official -- well,
16 it was an official hearing of some sort but it wasn't a
17 court case yet. That will be taken up here in March
18 sometime.

19 COMMISSIONER CHRISTMANN: Thank you, Senator.

20 ALJ HOGAN: Commissioner.

21 COMMISSIONER HAUGEN-HOFFART: I do have a
22 question. Senator Magrum, on the survey bill that's
23 going to be heard on Friday in the House, does that have
24 an emergency clause on it?

25 JEFF MAGRUM: Yes, it does --

1 COMMISSIONER HAUGEN-HOFFART: Okay.

2 JEFF MAGRUM: -- Commissioner Hoffart.

3 COMMISSIONER HAUGEN-HOFFART: Thank you.

4 ALJ HOGAN: Mr. Dawson, any questions?

5 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

6 Thanks for coming.

7 ALJ HOGAN: All right. Thank you, Senator. We
8 have an extra copy. I don't know if you want it back.

9 JEFF MAGRUM: Okay. Thank you for your time.

10 ALJ HOGAN: I'll have you start by stating your
11 full name and spelling your last name for the record.

12 MITCHELL FLANAGAN: Mitch or Mitchell Flanagan.

13 F-L-A-N-A-G-A-N.

14 ALJ HOGAN: Mr. Flanagan, were you in the room
15 when I went through the penalties for perjury?

16 MITCHELL FLANAGAN: Yes.

17 ALJ HOGAN: And do you understand what perjury
18 is?

19 MITCHELL FLANAGAN: Yes.

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

23 MITCHELL FLANAGAN: I do.

24 ALJ HOGAN: All right. Thank you. Go ahead.

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MITCHELL FLANAGAN,

being first duly sworn, testified as follows:

MITCHELL FLANAGAN: I just handed out a future land use map of Burleigh County and the location, proposed location, of the hazardous liquid pipeline. On this map you'll see municipal areas, agriculture zones, greenway overlay, industrial zones, industrial opportunities, outlined suburban, public, rural, and suburban areas, community centers, neighborhood centers, regional centers, and future activity centers. The bright yellow is outlining suburban. The shaded gray area are municipal areas. Lighter -- the light pale green are agriculture zonings.

This map was developed in 2016. We have not got a current future land use map. Hopefully, within the next two years we hope to have one that -- with a new comprehensive plan.

The reason why I'm bringing this up is that there's references made to the Together 2045 plan from the City of Bismarck. That plan does not overlap this map. It does not overlap any areas in Burleigh County's jurisdiction. So there was nobody that contacted our office. We have a Burleigh County Planning Office. Not anybody. The only person that did ask for our future land use map was Victor Schock from your commission.

1 We know that this north corridor of Burleigh
2 County is the most positive side of development for our
3 county. We can't go south because it's mostly
4 floodplain. We can't go east because there's high water
5 tables and floodplains as well. The north corridor is
6 out of all floodplains and developed land is obviously
7 going in that direction.

8 There are two major subdivisions near this
9 pipeline, within thousands of feet of this pipeline.
10 There's one, a subdivision that is on our dockets right
11 now that this pipeline runs through the center, a 50-lot
12 subdivision. There was a subdivision that was denied
13 two years ago that had 120 lots that are on the -- that
14 are on the location of this pipeline. So it's clearly
15 -- it's putting a beltway around any future development
16 and essentially for housing and residential because it's
17 so near to the city downtown area and the community. So
18 I want to bring that up.

19 And the other one is we have two ordinances that
20 are -- one has already been approved and adopted. We
21 have a public health statement. And we have a
22 resolution against the use of eminent domain for this
23 pipeline. The second ordinance, its final hearing is on
24 the 20th. And the first ordinance is based on --
25 primarily on life safety. We're concerned about the

1 life safety of the effect of this pipeline.

2 Burleigh County, in my mind, is at the most risk
3 of any other county because of the sheer amount of
4 volume at the -- at the juncture of this pipeline is
5 going to be going around the city of Bismarck. And that
6 first ordinance along with the public health statement
7 was directed towards public safety and public life's --
8 the protection of life safety.

9 Many people don't know that much about this
10 pipeline. I didn't know anything about CO2 pipelines
11 before I took this job, but the sheer size of it, the
12 sheer volume of it is -- it's not an 8-inch gas line.
13 It's not an 8-inch natural gas line with 400 PSI on it.
14 This is much more, to me, a threat to life safety
15 because of the sheer fact that it could explode. And
16 the blast area, we don't know what that is. We didn't
17 know what the plume formation is going to be. These are
18 things that probably will never be told to us.

19 So it's -- people fear this. They actually fear
20 this pipeline. And they're devastated that it's going
21 through the center of their properties. One gal, it's
22 going 600 feet from her house. And they're just
23 absolutely helpless with this.

24 And they -- they put us, they put these county
25 commissioners in between Summit Carbon Solutions and

1 you. Our appeal is going to be to you for these
2 ordinances. The Century Code allows us to have local
3 zoning. Thank God the Century Code does allow that.
4 Somebody thought enough to put that in there to have
5 local input for allowing these ordinances. And the
6 primary reason for it is for setbacks. And it's not to
7 restrict this pipeline, but it's to protect the people
8 that live here now with their homes and to keep the
9 pipeline away from their home.

10 We have setbacks for safety reasons. We have,
11 you know, 250 feet off of a state highway. You can't
12 build any buildings within that. You can't build so
13 many -- within so many miles of a rifle range. They're
14 designed for safety.

15 So my appeal is going to be to you or when --
16 when these ordinance come into play. And it's the
17 protection of the people of Burleigh County.

18 ALJ HOGAN: Mr. Flanagan, can you just state
19 what your position is?

20 MITCHELL FLANAGAN: Planning director for
21 Burleigh County.

22 ALJ HOGAN: Okay. Thank you.

23 Mr. Bender, any questions?

24 MR. BENDER: No questions.

25 ALJ HOGAN: Mr. Pelham?

1 MR. PELHAM: No questions.

2 ALJ HOGAN: Mr. Schock?

3 MR. SCHOCK: Once the ordinances are finalized,
4 will you be filing those with the Commission?

5 THE WITNESS: Yes.

6 MR. SCHOCK: Do you have an anticipated date of
7 when they're up for approval?

8 MITCHELL FLANAGAN: March 20th is the final
9 hearing. If it gets adopted, I can get you a copy by
10 the 21st.

11 MR. SCHOCK: Thank you.

12 ALJ HOGAN: Mr. Bakke, any questions?

13 MR. BAKKE: Just a few questions.

14 You mentioned this development where the
15 pipeline route is proposed to go through the middle of
16 it and it has 50 existing lots. Which development is
17 that?

18 MITCHELL FLANAGAN: It's -- it's called Frank
19 (phonetic) subdivision. It's not -- it has not been
20 heard yet. It's in the preliminary stage. We had a
21 meeting last week on it. It's right north of Heritage
22 Reserve.

23 MR. BAKKE: And then you mentioned another one
24 where the pipeline runs within 2,000 feet. Which
25 subdivision is that?

1 MITCHELL FLANAGAN: The Heritage Reserve.

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

3 Thank you.

4 ALJ HOGAN: Mr. Leibel?

5 MR. LEIBEL: I have no questions.

6 ALJ HOGAN: Commissioner Christmann?

7 MITCHELL FLANAGAN: Thank you.

8 ALJ HOGAN: No. Hang on, hang on. Commissioner
9 questions yet.

10 COMMISSIONER CHRISTMANN: I'm looking out by
11 Menoken and there's the kind of pink circle. That must
12 be the community of Menoken; correct?

13 MITCHELL FLANAGAN: Yeah. Their future activity
14 center. It's -- it's kind of hard to tell on this
15 narrow map. It could be the neighborhood center or the
16 future activity but it's --

17 COMMISSIONER CHRISTMANN: And then what's the
18 big circle right to the north of it around the exit?

19 MITCHELL FLANAGAN: A regional center.

20 COMMISSIONER CHRISTMANN: A regional center of
21 what?

22 MITCHELL FLANAGAN: Menoken.

23 COMMISSIONER CHRISTMANN: I'm feeling Menoken is
24 the pink dot and then there's a bigger red circle around
25 it. Which one is --

1 MITCHELL FLANAGAN: Okay. The big red circle.
2 That could be the -- that could be the off ramps.
3 There's an industrial area there. It's an off ramp from
4 I-94.

5 COMMISSIONER CHRISTMANN: Okay. And then from
6 Menoken about halfway into town is one of those pink
7 dots. What's that?

8 MITCHELL FLANAGAN: I think that's the city of
9 Menoken, isn't it?

10 COMMISSIONER CHRISTMANN: Well, isn't the one
11 down where it says "Menoken" Menoken?

12 MITCHELL FLANAGAN: Yes.

13 COMMISSIONER CHRISTMANN: But then halfway into
14 town is another one.

15 MITCHELL FLANAGAN: Oh, halfway into town --
16 okay. It could be the Apple Valley area, the
17 neighborhood, the golf course there.

18 COMMISSIONER CHRISTMANN: Okay. All right.
19 Thank you.

20 ALJ HOGAN: Commissioner Haugen-Hoffart.

21 COMMISSIONER HAUGEN-HOFFART: You can't leave
22 yet. I know you want to go home. Just wait. Okay?

23 You talked about the growth plan. And is that
24 off of this Burleigh Growth 2015?

25 MITCHELL FLANAGAN: Yes.

1 COMMISSIONER HAUGEN-HOFFART: Is this the
2 resource?

3 MITCHELL FLANAGAN: Yeah.

4 COMMISSIONER HAUGEN-HOFFART: Now, this went
5 through -- projections through 2040, I believe, or 2045?

6 MITCHELL FLANAGAN: No. That's the city of
7 Bismarck.

8 COMMISSIONER HAUGEN-HOFFART: So what -- has
9 this been updated?

10 MITCHELL FLANAGAN: No.

11 COMMISSIONER HAUGEN-HOFFART: So what are you
12 basing some of your growth plans off of?

13 MITCHELL FLANAGAN: Well, the -- obviously this
14 is what was predicted in 2016. And we have seen four
15 or five subdivisions coming in the same area. So it's
16 -- we do not have an updated map but I can guarantee
17 it's going to look a lot different than this and it's
18 going to be closer to this pipeline.

19 COMMISSIONER HAUGEN-HOFFART: Okay.

20 MITCHELL FLANAGAN: All of our subdivisions,
21 every one, there's Summit Point to Heritage Reserve to
22 Stonegate to The Ranch, all those are located near this
23 -- on this beltline of where this pipeline is going.

24 COMMISSIONER HAUGEN-HOFFART: So for my
25 understanding, if a developer is purchasing land north

1 of Bismarck, they come to you guys and that comes like a
2 tentative plan --

3 MITCHELL FLANAGAN: Right.

4 COMMISSIONER HAUGEN-HOFFART: -- that they want
5 this and they go through their permitting and all that.
6 So part of that is just based on developers or
7 individuals coming to you guys and saying "This is my
8 projected plan."

9 MITCHELL FLANAGAN: Yes. They usually -- we
10 usually have a staff meeting with them. They bring
11 their preliminary plans to us, and we tell them "Yes,
12 you got to do this, you can do this, you can do that,
13 and you can't do this or you can't do that." It's
14 helping them decide what to do for the future of their
15 property in developing it.

16 COMMISSIONER HAUGEN-HOFFART: What's the most
17 projected plan or development that has come to you out?
18 You know, do you have something in 2024, '25? Has
19 anything -- down the road, in the future, come to you?

20 MITCHELL FLANAGAN: Well, Summit Point has a
21 rather large master plan. The Ranch has a second master
22 plan going north towards this pipeline. Stonegate,
23 which was in that area, there's owners up in that area,
24 that this was actually denied, but they had 120 lots in
25 this subdivision area. They still intend to develop

1 that, which is -- is on the same route.

2 COMMISSIONER HAUGEN-HOFFART: So if Summit would
3 have come to you when they started this, how would you
4 have presented them information for them to look at?
5 Would you have given them a map like this? Or what
6 would have been presented to them to look at for
7 establishing their route?

8 MITCHELL FLANAGAN: Well, we would have
9 determined where their property is and what the
10 floodplains, wetlands, zoning, developments, high
11 development areas, we would have explained that to them.
12 So I mean it's easy to determine their zone, their
13 current zoning.

14 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

15 ALJ HOGAN: Mr. Dawson.

16 SUBSTITUTE DECISIONMAKER DAWSON: No questions.
17 Thanks for coming.

18 ALJ HOGAN: All right. Now you're done. Thank
19 you.

20 All right. Can you state your full name and
21 spell your last name for the record.

22 BRIAN BITNER: Brian Bitner, B-I-T-N-E-R.

23 MR. BENDER: And, Your Honor, at this point in
24 time I'm going to raise an objection respectfully.

25 BRIAN BITNER: No, that's fine. I'm intending

1 to yield my time. I just have a reason to sit down.
2 That's all.

3 MR. BENDER: Okay. And I was just -- well, I'll
4 see what --

5 BRIAN BITNER: See, I'm going to be interviewed
6 -- or with the intervenor. I understand that. My goal
7 is to make sure that our zoning ordinances and the draft
8 that we're looking to have on our agenda for our next
9 meeting is included in your records. And I spoke with
10 the judge at a break and I think that's all covered so I
11 wanted to make sure, because the county commission asked
12 me to show up and represent Burleigh County Commission.
13 I want to know, if you have any questions about any of
14 those, I'd be happy to answer them. And otherwise I'm
15 going to yield my time so the public can get up here and
16 speak.

17 ALJ HOGAN: All right. I'll ask first if
18 there's any questions.

19 Mr. Bender?

20 MR. BENDER: I don't have any questions.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: No questions.

23 ALJ HOGAN: No?

24 Mr. Bakke.

25 MR. BAKKE: Your Honor, I plan to call Mr.

1 Bitner as a witness --

2 ALJ HOGAN: So he's going to testify later.

3 MR. BAKKE: Yes.

4 ALJ HOGAN: Okay.

5 MR. BAKKE: I'll ask my questions then.

6 ALJ HOGAN: Mr. Leibel.

7 MR. LEIBEL: No questions.

8 ALJ HOGAN: Are there any questions from the
9 commissioners?

10 All right. Well, thank you, Mr. Bitner.

11 BRIAN BITNER: You're welcome.

12 ALJ HOGAN: All right. Next, if I can have any
13 landowners within the pipeline route that is subject to
14 this hearing.

15 Come on down. Can I get your name?

16 KEVIN SCHIEVE: Kevin Schieve, S-C-H-I-E-V-E.
17 And I did hear your spiel with lying.

18 ALJ HOGAN: The penalties for perjury, is that
19 what you're referring to? And do you understand what
20 perjury is?

21 KEVIN SCHIEVE: I do.

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

25 KEVIN SCHIEVE: I understand.

1 ALJ HOGAN: All right. Go ahead.

2 KEVIN SCHIEVE,

3 being first duly sworn, testified as follows:

4 KEVIN SCHIEVE: They came out to my place a year
5 ago or better. They wanted to come through. I own
6 eight lots in Jaszkwia subdivision. And the
7 difference in taking of this land within ten miles of
8 Bismarck and then the rural areas is night and day. In
9 1970, 26th Street was the east edge of Bismarck. Now
10 we're out to 119th Street where I live. We have all
11 kinds of people out there. Mariner's building. We have
12 -- we have -- I just said it -- Apple Valley. We have
13 the Mees Addition. We have two subdivisions with -- and
14 they're encroaching on my property. Over a hundred
15 houses. They're selling at 70,000 a lot out there.

16 Now, for these people to come where they're
17 coming and want to give these people a pittance for
18 their land and no reputable developer will ever want to
19 develop within a half mile of that. I had a friend of
20 mine die two years ago. His wife is now dealing with
21 this. They're serving her with papers right now. I'm
22 here because I got them to move away from my place.
23 They moved up by theirs and over the mayor's. And
24 they're all suffering from this now. This is wrong.
25 That land is worth -- in the 99 years they're going to

1 be here, that land will be worth a hundred dollars an
2 acre easy. There's no doubt in my mind.

3 With this -- with this city moving in that
4 direction and north, it shouldn't be allowed. If you
5 guys allow this, make them move it. Make them move it
6 north. Jeff came out to my place and made some offers,
7 made some pittance offers, 45,000 to go across a mile.
8 And then we went into his office to meet with some
9 again. And he asked us if we would take 1.2 million to
10 come through that housing development, that 8-lot
11 24-acre housing development, diagonally, ruining it, but
12 I could keep the land and I could farm it. I'm farming
13 it. I've never developed it. I bought it actually to
14 keep the housing out 30 years ago.

15 There's better places for a pipeline. You're
16 going to ruin the city -- I mean, the future of Bismarck
17 is here, you know. He's been arguing all day long and
18 these guys have been sitting here and giving you the
19 runaround, is what I call it. Do the right thing. Move
20 this pipeline out to where it should be. You could go
21 up by Baldwin. These people would be happy to take
22 45,000 a mile. And go all the way to Wing and right
23 down to Sterling, you know. I mean, stay in the land
24 where nobody lives, you know, and where there's not
25 going to be housing for 99 years, you know. This is the

1 wrong place for a pipeline.

2 And the danger they can say is not there, and so
3 be it. They're more -- they know more about that than I
4 do, but this is the wrong place for a pipeline.

5 If you got any questions, I guess I'd take them.

6 ALJ HOGAN: All right. Mr. Bender, any
7 questions?

8 MR. BENDER: No questions.

9 ALJ HOGAN: Mr. Pelham.

10 MR. PELHAM: No questions.

11 ALJ HOGAN: Mr. Schock.

12 Mr. Bakke.

13 MR. BAKKE: Yeah, just one question,
14 Mr. Schieve. Do you believe that if the pipeline goes
15 in its present route, that it will diminish the value
16 of --

17 KEVIN SCHIEVE: Oh --

18 MR. BAKKE: -- your land and other
19 (indiscernible)?

20 KEVIN SCHIEVE: What they did is they went five
21 miles back on the -- on their -- I live on Fifth Avenue.
22 It would be south of Highway 10. Where the mayor's land
23 is, is five miles north of mine. They went from there,
24 they went towards Menoken and then cut down.

25 Why couldn't they have went -- and I told Jeff

1 this when he was out there. Why are you running this
2 thing so close to Silver Ranch and this big Mariner
3 operation I've got going out at my place? It makes no
4 sense. You can find a better route for this thing.

5 And all I'm asking out of you guys -- I mean, I
6 would just as soon see it not go, but what I'm asking
7 out of you is move this pipeline. It's in the wrong
8 spot.

9 MR. BAKKE: I have no further questions.

10 ALJ HOGAN: Mr. Leibel, any questions?

11 MR. LEIBEL: No questions.

12 ALJ HOGAN: Any questions from commissioners?

13 COMMISSIONER CHRISTMANN: I do not. Thank you
14 for being here.

15 COMMISSIONER HAUGEN-HOFFART: I am sorry, I
16 didn't catch your name.

17 KEVIN SCHIEVE: Kevin Schieve.

18 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you,
19 Kevin.

20 KEVIN SCHIEVE: S-C-H-I-E-V-E.

21 ALJ HOGAN: All right. Thank you.

22 Good evening. Could I get your name and would
23 you spell your last name for me?

24 KARL RAKOW: My name is Karl Rakow, Karl with a
25 K, last name is Rakow, R-A-K-O-W.

1 ALJ HOGAN: All right. And, Mr. Rakow, did you
2 hear me go through the penalties for perjury earlier?

3 KARL RAKOW: Yes, I did.

4 ALJ HOGAN: And do you understand what perjury
5 is?

6 KARL RAKOW: Yes.

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

10 KARL RAKOW: Yes.

11 ALJ HOGAN: All right. Thank you. Go ahead.

12 KARL RAKOW,

13 being first duly sworn, testified as follows:

14 KARL RAKOW: You know, the whole discussion here
15 is supposed to be about safety. And I've been to most
16 of the meetings, and it seems like everything seems to
17 go back to, even though the CO2 pipeline's out of the
18 jurisdiction along with gas lines, natural gas, and all
19 of that, you know, and all the safety things of the
20 history go back to those, you know, the CO2 pipeline is
21 a different animal. I mean, if we have a natural gas
22 leak or if a farmer hits out in the middle of a field,
23 unfortunately if his backhoe is close to it, that may
24 not be good for him. But we're dealing with a CO2
25 pipeline where we've had testimony and, you know, where

1 people can die from it. And the safety issues are
2 whether we can handle that currently where the pipeline
3 is going.

4 PHMSA, which everyone keeps going back to, that
5 they are, I don't know, the final say or kind of here is
6 where we go for our information, Mr. Bakke read a little
7 bit of one of the reports from PHMSA with "The incident
8 in Satartia that prompted the Pipeline and Hazardous
9 Materials Administration to initiate funding of new
10 research and development, and R&D, projects related to
11 the safe transportation of carbon dioxide through
12 pipelines. These projects, titled 'Developing Design
13 and Welding Requirements and Including Materials Testing
14 and Qualifications of the New and Existing
15 Pipelines --'"

16 If the questions on dispersion -- how many times
17 that word has come up today, I don't know if I could
18 count it on both hands and toes.

19 So PHMSA's addressing or the answer we've all
20 been looking for will probably be in the last line of
21 what I'm going to read here. So part of the projects
22 intended to be reviewed by PHMSA to cover the following
23 knowledge gaps as they -- as it's written here.

24 "The appropriate fracture toughness and steel
25 pipe quality is currently unknown to prevent CO2

1 pipeline leak or ruptures. R&D project findings may be
2 used to develop pipe quality standards and strategies
3 for correct placement of fracture mitigation measures
4 along the pipeline."

5 Two. "The effects of corrosion, dents, cracks,
6 or gouges have yet to be determined on a wide range of
7 steel grades regarding CO2 operation."

8 "Odorization strategies have yet to be
9 identified. Odorization of CO2 is likely one of the
10 simplest ways to ensure effective leak detection as well
11 as public safety and emergency response."

12 "There's currently no defined safe distance or
13 plume dispersion model for developing a potential impact
14 area around CO2 pipelines. Without the potential impact
15 area, it is impossible to establish accurate emergency
16 response safe distances. Due to the asphyxiation
17 potential of the CO2 pipelines, this could have deadly
18 consequences. Only once an appropriate potential impact
19 area for CO2 pipelines has been established can PHMSA
20 access the effectiveness of the integrity of managing
21 procedures."

22 "Results from these projects will not be
23 available for two years and the funding provided to
24 study these complex issues is relatively small."

25 When Summit is going to, in the future, make

1 billions from this, and if my calculator worked right,
2 and certainly anyone could correct me, that if there's
3 49,200 tons going through a day, potentially, at the
4 cost of what the -- originally it was \$58 a ton. And
5 once the infrastructure act was passed, now it's \$85 a
6 ton. And you can certainly correct me. I did it three
7 times, but my fingers are big on those little buttons.
8 49,200 tons daily at that \$85 is \$4,182,000 a day. If
9 this is going to be a project for the next 30 years of
10 the pipeline, you know, certainly the -- in my opinion
11 to get who everyone says is the final source of as best
12 we can the correct answers, you know, why are we trying
13 to do that now? We should be waiting and maybe put some
14 pressure on to get these answers earlier.

15 A comment was made on Summit that if they put
16 the pipeline in, that -- I'm not sure of the exact word,
17 but hoping it would be grandfathered in. My concern is
18 that when everything is checked of what I read here,
19 that if there were some new rules or regulations that
20 would pertain or make it safer, well, you're not going
21 to come up and dig 2,000 miles of pipeline. You know, I
22 mean it just -- that is the concern, and the concern is
23 safety.

24 Our 2045 Growth for Bismarck, Enhance the Safety
25 and Security of the Public, says "Prepare for potential

1 human-caused disasters by addressing vulnerabilities and
2 reserving sufficient response capacity to minimize the
3 impact on life and property."

4 I mean, I have heard -- I mean, I'm a
5 conservationist. I love being out in the country. I
6 mean, Burnt Creek runs right through my property. You
7 know, I'm five miles north of Costco in the valley. I
8 was in the country when I bought my 50 acres. Now there
9 are subdivisions south of me and north of me.
10 Fortunately, I'm in the valley and I can't see the
11 hundreds of windmills that, when I moved here 30 years
12 ago and I got the top of 110th, there were literally
13 four or five lights. And now on top of 110th the entire
14 horizon is with lights. That's where Bismarck is going.

15 The concerns for the plover, for the fish, for
16 the pheasants, for all of this. I mean, our Game and
17 Fish has done an excellent job of conservation and
18 everything involved with it, but my concern is the
19 public safety and lives of people in Bismarck and Mandan
20 that could be affected -- pardon me for being blunt --
21 are more important than that. The pheasants -- if we
22 don't go near the prime nesting areas, the pheasants are
23 going to run away from the backhoes. I mean, at just
24 someplace human life has to have some more importance.

25 I got a little ahead. I was trying to shorten

1 what I was going to say. As I said, I have 50 acres
2 just north of town and the pipeline will be about -- the
3 latest I saw, about 500 foot from my property line and
4 about a thousand foot from my house, and that, where I
5 see the closest I could find on Google, is about the
6 same distance that it would be from the Heritage
7 Reserve.

8 I spoke with Chad Moldenhauer prior to
9 testifying at a county committee meeting, if it was okay
10 that I brought up his subdivision, and I asked how many
11 homes would be there, and it would be 180 homes when
12 that was done. I talked with Jackie Andahl with The
13 Ranch, and, you know, there's possibly four phases that
14 are there from the initial. When that's done, there
15 would be 200 homes. And, again, as Mitch alluded to,
16 that's the way Bismarck, you know, is going.

17 I'm in the bottom of a valley. You know, I'm
18 sure that -- hopefully, you've seen the videos from the
19 test sites in Norway that were 8-inch pipeline, you
20 know, and just the ramifications of it. If you watch
21 it, it does not go up into the air like an explosion
22 would for perhaps a natural gas pipeline or something
23 like that. It spreads out, and many times that's in
24 lower areas. Well, when there's fog, my valley can be
25 totally thick in the fog, and I get up to 110th and the

1 sun is shining. You know, I made the comment to my wife
2 that, well, if they get this through, that maybe we'll
3 have to go get, like, scuba tanks, that if something
4 happened, because you can't smell it, you can't see it.
5 And then one of the comments was that, with an explosion
6 like that, if it were close, I wouldn't have time to get
7 to the closet to get the scuba gear.

8 The first response. I mean, it all gets back to
9 safety. It was interesting, I found, that the Bismarck
10 Fire Department said that it was not part of their
11 jurisdiction. Well, the rural fire department is way
12 down south. We're up north. We don't have the leisure
13 of time with this type of explosion or release.

14 ALJ HOGAN: Mr. Rakow, you're at about
15 11 minutes so if you could wrap it up --

16 KARL RAKOW: Okay.

17 ALJ HOGAN: -- I'd appreciate that.

18 KARL RAKOW: Okay. So we get back to safety.
19 They said that -- Summit said it would offer material
20 resources and supplemental equipment as needed. You
21 know, there is -- you know, vehicles don't run if
22 there's not oxygen. In Satartia, they couldn't get
23 close. They had to carry people out. There was 42
24 houses they went to. Yes, no one died. They got there
25 in time. There's what, 80,000 people Bismarck, Mandan?

1 If there was something in the pipelines going north and
2 the winds normally are north, northwest. At one of the
3 committee meetings that -- it was like a -- said it was
4 like 16 miles that that plume went with the weather.
5 Well, if that pipeline is north of Bismarck, 16 miles is
6 way -- I mean, think about it.

7 Number one, I think personally the pipeline
8 should be south. It would not affect as many people.
9 And if there were issues, the emergency personnel could
10 get to a limited number of people versus Bismarck,
11 Mandan. If it can't go south, then it should go much
12 further north, that it would be dissipated before it got
13 to the major population area.

14 And I don't see Summit buying, if that were
15 necessary, all of the breathing devices for all of the
16 fire departments, electrical vehicles that could get
17 there. I mean, it just -- it is physically impossible
18 that if there were a major risk issue, that we could get
19 -- save people in Bismarck and Mandan.

20 You know, I think the bottom line is safety.
21 You know, this should be somewhere else. But I think
22 with the -- it just should be way north or south, but we
23 have not addressed the issues of safety if there were
24 something massive around Bismarck. And time is of the
25 essence of people in Satartia. You know, 45, they

1 didn't die because they got to them to the hospital. We
2 can't get to Bismarck and Mandan and protect everyone.
3 I mean, this is serious.

4 One of my concerns is -- last statement. This
5 is supposed to be a public hearing, and we heard pretty
6 much all the emphasis from Summit and what they're going
7 to do. This room was about three-quarters full when we
8 first started. And the second page out there, there
9 were like 13, 14 people that wanted to talk. The first
10 page was probably more. I don't know, is it any -- just
11 not a question, a comment. If we want the public to be
12 here, look at the room. There's -- well, we're a little
13 fuller. If it's possible to have another hearing or
14 extend it for tomorrow where more of the public input
15 can be made.

16 Thank you so much for your time.

17 ALJ HOGAN: All right. Thank you.

18 Mr. Bender, any questions?

19 MR. BENDER: Your Honor, just one quick
20 question.

21 Sir, you read extensively from some document at
22 the early part of your testimony. Can you tell me what
23 that was?

24 KARL RAKOW: That was from the PHMSA.

25 MR. BENDER: Can you tell me what it was called?

1 KARL RAKOW: This is from the Pipeline Safety
2 Trust. And this was -- says on Pipeline Safety Trust
3 and made reference to that.

4 MR. BENDER: Does it have a date on it?

5 KARL RAKOW: Bellingham, Washington. No, it
6 does not. But I think the date is not as germane as the
7 comments of what PHMSA can and do and the time that they
8 take to do it.

9 ALJ HOGAN: All right.

10 MR. BAKKE: I think this has been marked as
11 Exhibit W151.

12 KARL RAKOW: Right. Because you started reading
13 the very first part of it.

14 MR. BENDER: All right. Thank you.

15 ALJ HOGAN: All right. Thank you.

16 KARL RAKOW: Okay.

17 ALJ HOGAN: Mr. Pelham, any questions?

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

19 ALJ HOGAN: Mr. Schock. Mr. Bakke.

20 MR. BAKKE: No.

21 ALJ HOGAN: Mr. Leibel.

22 MR. LEIBEL: No questions.

23 ALJ HOGAN: Any questions from the
24 commissioners?

25 COMMISSIONER CHRISTMANN: I would just say I --

1 we will have to get together as a group because we make
2 decisions that way as a commission. I will tell people
3 we will not be continuing this hearing tomorrow because
4 we have other things scheduled. What we'll do, I don't
5 know.

6 I also will say -- you mentioned something to
7 the effect that the company took all the time today,
8 Summit took all the time today --

9 KARL RAKOW: No. I said that --

10 COMMISSIONER CHRISTMANN: -- and I will say that
11 a great deal of the time today was taken by one of the
12 intervenors.

13 KARL RAKOW: All right.

14 ALJ HOGAN: Thank you, Mr. Rakow.

15 All right. Can I have you state your full name
16 and spell your last name for the record.

17 GAYLEN DEWING: My name is Gaylen Dewing. Spell
18 my last name D-E-W-I-N-G.

19 ALJ HOGAN: Mr. Dewing, were you in the room
20 when I went through the penalties for perjury?

21 GAYLEN DEWING: I was.

22 ALJ HOGAN: Do you understand what perjury is?

23 GAYLEN DEWING: I do.

24 ALJ HOGAN: And being advised of those potential
25 penalties for perjury, do you promise to tell the truth

1 in this case today?

2 GAYLEN DEWING: I do.

3 ALJ HOGAN: All right. Thank you. Go ahead.

4 GAYLEN DEWING,

5 being first duly sworn, testified as follows:

6 GAYLEN DEWING: First of all, I'd like to say
7 that although the Summit witnesses spent a great deal of
8 time talking about their credentials, their experience
9 and so on, I won't bore you with mine except to tell you
10 that I do have a master's of science degree from the
11 University of North Dakota in accounting, I was a
12 computer programmer for IBM, served in the United States
13 Army during the Vietnam War, and have been a member of
14 the North Dakota Society of CPAs for over 50 years.
15 Having said that, the credential I'm most proud of is
16 that I have been a farmer and rancher for over 50 years
17 just east of Bismarck. That, I think, is an important
18 credential.

19 In the report that the pipeline department of
20 the United States Government that is charged with making
21 the regulations on CO2 pipelines investigated the event
22 down in Mississippi that we're all familiar with. And
23 if you look at their report, one of the very last things
24 stated in that permit is that they asked that no new
25 pipelines be permitted until they are able to write

1 their new regulations. I think that's very important
2 and I think it's something we should very strongly
3 consider when looking at this.

4 We've been told many times in this hearing that
5 a CO2 pipeline is no different than other pipelines.
6 The only similarity I see between the CO2 pipeline and
7 the other pipelines is that they're both pipelines.
8 Well, on my ranch we have two kinds of cats. They're
9 both cats. One is a domestic house cat, the other one
10 is a mountain lion. I treat them differently. And I
11 would respectfully suggest that we do the same with
12 pipelines. We look at the differences and we treat them
13 according to their differences.

14 People have asked me how much CO2 is going to be
15 let out of these pipelines should they rupture, and
16 these are people that are my farming buddies, people
17 that aren't versed. They hear millions of tons of this
18 and that, and they don't know what that means. So I
19 tried to figure out in terms of how many railcars,
20 tanker cars full of CO2 could be released in 20 miles of
21 pipeline.

22 So the first thing I did is I went back to my
23 high school days, looked up the algebraic formula for
24 figuring out the volume of a cylinder, which is what the
25 pipeline is. And I found out the formula is that volume

1 equals pi R-squared times the length. So using feet, I
2 came up with a calculation of how many cubic feet that
3 was, compared that to the number of cubic feet in a
4 railcar, and I came up with the idea that the volume in
5 this 20 miles of pipeline would be approximately equal
6 to 100 railroad tanker cars, and a hundred railroad
7 tanker cars would be about 500 semi tankers.

8 Well, I didn't take into consideration the
9 differences in pressure. I had people who have been
10 well-versed in pipelines since that tell me that the
11 differences in the pressure means that the pipeline --
12 that my calculations were slightly off because you'd
13 have to multiply it times another 350 times as much.
14 I'm not a mathematician whiz, I'm not an engineer, but
15 these people seem to know what they were talking about.
16 So that means instead of a hundred tanker cars in 20
17 miles of pipeline, it would be 35,000 railroad tanker
18 cars.

19 We talk about how many millions and billions and
20 so on of dollars there are. I personally don't care how
21 many zeros you put after the dollar sign. Those dollars
22 are not worth risking one of our children that is --
23 would be attending the seven -- one of the seven schools
24 in Burleigh County that are within five miles of that
25 pipeline.

1 I ask that if you cannot deny this pipeline
2 project from being permitted, at least delay it until
3 PHMSA can write new regulations.

4 Thank you. And God be with you as you consider
5 this very important decision for the people of North
6 Dakota. Thank you, Commissioners.

7 ALJ HOGAN: All right. Thank you.

8 Mr. Bender, any questions?

9 MR. BENDER: No questions.

10 ALJ HOGAN: Mr. Pelham.

11 MR. PELHAM: No questions.

12 ALJ HOGAN: Mr. Schock. Mr. Bakke, any
13 questions?

14 MR. BAKKE: No, Your Honor.

15 ALJ HOGAN: Mr. Leibel, any questions?

16 MR. LEIBEL: No, Your Honor.

17 ALJ HOGAN: Any questions from commissioners?

18 COMMISSIONER CHRISTMANN: Thanks for being here,
19 Gaylen.

20 COMMISSIONER HAUGEN-HOFFART: I just have a
21 statement. Gaylen, thank you for your military service.

22 GAYLEN DEWING: Thank you.

23 ALJ HOGAN: All right. Thank you.

24 All right. Do we have other land owners or
25 county residents that would like to offer testimony?

1 UNIDENTIFIED SPEAKER: Your Honor, when you say
2 "county," you're talking about like Oliver, Morton, and
3 Burleigh; correct?

4 ALJ HOGAN: Correct. Thank you. Yep, the
5 counties subject to this hearing.

6 Hi. Can I get your full name and have you spell
7 your last name for the record?

8 SADIE BRO: Yes. My name is Sadie Bro, B-R-O.

9 ALJ HOGAN: And, Ms. Bro, did you hear me go
10 through the penalties for perjury earlier?

11 SADIE BRO: I did.

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

14 SADIE BRO: Yes.

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

18 SADIE BRO: I do.

19 ALJ HOGAN: All right. Thank you. Go ahead.

20 SADIE BRO,
21 being first duly sworn, testified as follows:

22 SADIE BRO: So I am a Bismarck resident. I am a
23 new face here. The pipeline is crossing our land. I
24 grew up in Bismarck and then I ended up going to school
25 in Minneapolis and continued some education in Ames,

1 Iowa, for a veterinary degree. My husband went to UND
2 Med School and then we went to Salt Lake City for
3 residency.

4 We moved back approximately eight years ago. We
5 moved to south Bismarck and bought five acres, only
6 reason being is because we were unable to find more land
7 at that time. We looked very hard. Because of my
8 husband's job, we need to be within 30 minutes of the
9 hospital. He is a physician and he is currently working
10 and when he works he stays at the hospital. So our
11 property went up for sale approximately three and a half
12 years ago, October 2018. We made an offer within three
13 days because we desperately wanted to find some land in
14 Bismarck area, close to Bismarck, or close to the
15 hospital.

16 We have five children and I home-school so I
17 represent a different group of people but I still have
18 five beautiful children with kids on the property 24/7.
19 My kids use our 80 acres for snowmobiling, sledding,
20 horse riding, hiking. I have friends out there all the
21 time because we have some beautiful hills in northwest
22 Bismarck straight west of Double Ditch.

23 When we were approached by the pipeline
24 approximately one year after living there, they were
25 kind of "this might go through, this might not." And

1 the gal that worked with us originally, her name was
2 Kayla. The first thing I was told was that it was going
3 to be a food-grade carbon pipeline. Not knowing much
4 about pipelines, I'm not opposed to pipelines, oil, gas,
5 sure. If they explode, if there's a leak, I can smell
6 it and I can get out of there. With this pipeline, I
7 would not know if there was a leak other than maybe I
8 would asphyxiate or my children would be on the property
9 and I would not be able to help them. Our house is low.
10 We have these beautiful hills high up. And so finding
11 out that carbon dioxide is heavier than air, it will
12 move down into the valley, which is where our house is.

13 So we have approximately 90 acres just north of
14 Bismarck. And within the three years of living there,
15 Costco has been built. I've been told that there's
16 going to be a Fleet Farm going up along 83. We live
17 straight west of The Ranch Development.

18 And the other thing I don't know that was
19 addressed today, I want to address safety, is we're post
20 Covid, and I'm surprised that maybe more people haven't
21 identified this, but our healthcare workers are
22 overworked. There's a shortage of nurses, there's a
23 shortage of doctors. My husband gets letters fairly
24 frequently asking for physicians to come to other places
25 in the country. And they're advertising for another

1 physician in his department. I don't know if people
2 realize, if there was a gas -- a carbon dioxide gas
3 leak, how would our hospitals and healthcare system
4 handle that when we are short-staffed already?

5 But this is all for me very personal because I
6 have children on the property. We are using that
7 property for so many reasons. We have horses. We have
8 cats, dogs, chickens and, potentially, cows. And I say
9 that because my kids are in 4-H. But the other thing is
10 that I kind of want to address personally is they are
11 going to put a pipeline through my property. Since
12 we've lived on this property, we've been in a severe
13 drought. We're talking about destroying grasslands.
14 You can plant seeds all you want, but if we're in a
15 drought, we're not going to have much growth. And I
16 have animals. So am I supposed to be providing more hay
17 for them at my expense? Something to think about.

18 The other thing is taxes. I'm paying property
19 taxes. I asked the person who approached me with this
20 easement, if they put an easement on my property, am I
21 still paying the property taxes on their easement? I
22 am. It's my property. I pay taxes to Burleigh County.

23 So let's see. I wrote some things down. And I
24 do thank you guys, because I have been here since 8:30
25 this morning trying to get a chance to speak so I

1 appreciate this opportunity.

2 The other thing about it is when we bought this
3 property, the reason we made an offer so quickly is we
4 were thinking we're going to be here long term. This is
5 -- my family's from here. My husband grew up in Fargo.
6 And we looked at that 80-acre property as a potential
7 opportunity for our kids to build houses next to us. I
8 would love to have grandkids there some day. We bought
9 a beautiful property so it is a retirement home for us.
10 It's not like a short-term turn-around property for us.
11 We want to be there long term.

12 So as far as importance to me is property value.
13 With this pipeline, property value for us residents is
14 going down. Most of the speakers here today, and I
15 would have liked to hear more, but how many of them live
16 in Bismarck, North Dakota? How many of them are
17 residents paying taxes here? Seems like most of them
18 are living elsewhere.

19 As far as the safety, we've already addressed
20 this, but there is huge differences between the natural
21 gas, oil pipeline and this. We're talking about a
22 24-inch diameter. That's double if not triple the size
23 of all these other pipelines. We're talking a gas leak.
24 We would not know if it was there. If we can't smell it
25 or see it, we would not know where to go. It would

1 basically be health issues would give us the clue that
2 maybe we need to call 911.

3 The other thing I want to address, since this
4 pipeline is going across my hills, my beautiful hills,
5 we can hardly get hay to our horses in the winter this
6 time of year. We've had a lot of trouble, especially
7 this year, getting hay to our horses. If there's a
8 leak, I want to know how they're going to get there to
9 these hills. Like, there's a lot of snow. Our Bobcat
10 couldn't get there quickly. So to me it's a huge
11 problem because, yeah, I realize shutting off valves,
12 but in the meantime you've got a lot of gas coming out
13 of there.

14 And then the other thing is our district
15 representative spoke earlier. I had my own issues with
16 the surveyors. I did not have a legal case, but I did
17 threaten to call 911 if they didn't get off my land,
18 being -- the reason is, is I was very accommodating to
19 the pipeline early on. I actually liked the gal that
20 approached me, her name was Kayla, and I believe she was
21 let go. But I specifically asked, "I don't care if you
22 guys come and survey my land, but you need to ask for
23 permission." One day I was downstairs and I looked out
24 my window and my horses were running around the pasture.
25 And I looked up on those hills and there were six

1 people, with bright vests on, on top of those buttes.
2 No one had asked for permission even though I had given
3 permission previously, and all I asked was "Please call
4 me," because I need to make sure my horses are not going
5 to be out in the pasture, potentially let out of gates.
6 And that request was not fulfilled. So I did go up
7 there and I said, "You guys are trespassing, you need to
8 leave."

9 So these are -- I'm not a hard person to work
10 with, neither is my husband. We're very accommodating.
11 But these are things that, as citizens and residents,
12 you should not be treated like you're the bad guy in
13 this situation.

14 And the other thing is I did specifically ask
15 the new field coordinator, whoever he is, or somebody
16 who worked with us, his name was Ben, what would happen
17 if we did not sign this easement. And he said, Well,
18 the State of North Dakota has already given permission.
19 Eminent domain is probably the next thing.

20 It is pretty sad when I know how much we paid
21 for our property and to consider that they would even
22 threaten to take away my property if I didn't sign some
23 easement. At that point I did say, Well, then I'd have
24 to get legal counsel. I guess that's all I have.

25 ALJ HOGAN: All right. Thank you.

1 Mr. Bender, any questions?

2 MR. BENDER: No questions.

3 ALJ HOGAN: Mr. Pelham.

4 MR. PELHAM: No.

5 ALJ HOGAN: Mr. Schock.

6 Mr. Bakke.

7 MR. BAKKE: Just one.

8 Did your husband and you sign an easement with
9 Summit?

10 SADIE BRO: We have not signed an easement. I
11 just got this easement contract in the mail within the
12 last two weeks. This is the third one. But, no, we
13 have not signed an easement.

14 MR. BAKKE: And don't plan to?

15 SADIE BRO: We do not plan to.

16 MR. BAKKE: Thank you. That's all.

17 ALJ HOGAN: Mr. Leibel, any questions?

18 MR. LEIBEL: No questions.

19 ALJ HOGAN: Any questions from the
20 commissioners?

21 COMMISSIONER CHRISTMANN: Yes.

22 Sadie, have you seen like a pretty detailed map,
23 or the survey? Do you know where it is and how far it
24 would be from your home?

25 SADIE BRO: Yes. Actually, that was something I

1 want to address. I guess I didn't measure it out, but
2 looking on the maps out there, we are very close to this
3 easement. Our house is -- I can give you the address.
4 I probably believe that we're probably one of the ones
5 that are like 520. I don't know, but our house is very
6 close -- it's my backyard.

7 COMMISSIONER CHRISTMANN: Can you tell me like
8 the --

9 SADIE BRO: Address? Yes.

10 COMMISSIONER CHRISTMANN: -- township and range
11 and section and quarter?

12 SADIE BRO: I could find out. Is it on here?

13 Okay. So it's section 18, T140 north, R80 west.
14 And I think it crosses two -- because I've got two
15 different --

16 COMMISSIONER HAUGEN-HOFFART: Can you repeat
17 that, Sandy (sic)? I'm sorry.

18 SADIE BRO: Yes. It's section --

19 COMMISSIONER HAUGEN-HOFFART: 18.

20 SADIE BRO: -- 18, T140 north, R80 west.

21 COMMISSIONER HAUGEN-HOFFART: Thank you.

22 COMMISSIONER CHRISTMANN: Is there anything
23 more, like a southwest quarter, northeast quarter?

24 SADIE BRO: I guess I should have known that.
25 Tract number, would that help?

1 COMMISSIONER CHRISTMANN: I'll figure it out.

2 SADIE BRO: I know where I am, you know, in
3 comparison to Burleigh County and Bismarck, right? But
4 would -- I mean, I brought this stuff. I can find our
5 house on the map. We have a pond in our backyard and --
6 and we're very close.

7 COMMISSIONER HAUGEN-HOFFART: Sandy, I have a
8 question. You said you initially lived in south
9 Bismarck, then you moved to north Bismarck.

10 SADIE BRO: Yes. And we did that because -- we
11 had a beautiful property in south Bismarck, but we
12 wanted to have a minimum of 40 acres. Well, everybody
13 here knows who's lived in Bismarck how hard it is to
14 find Bismarck property. I mean, they call it the
15 "Bismarck bubble" for a reason. You can't find
16 property, especially land, within Bismarck city limits
17 or rural Bismarck without paying a small fortune. The
18 land value has gone up significantly and I keep an eye
19 on that. And like I said, for us personally, we were
20 hoping that some of our children maybe want to build a
21 house out there some day next to us. But that is the
22 only reason we moved.

23 The other thing I probably should mention, and
24 it's already been mentioned so I don't want to be
25 redundant, but the wind blows up in north Bismarck much

1 more than south Bismarck. And it's coming from the
2 northwest. We live in a valley and it's -- we have huge
3 drifts because it comes right into the -- through --
4 from the northwest. And when we go up on those hills,
5 we can see the city of Mandan because we are actually --
6 one of our buttes, I call it, the North Dakota
7 mountains, I believe we are the second highest elevation
8 in the city in this area. There's one other peak higher
9 and that's our neighbors, the Andahls. So we can see
10 Bismarck, we can see Mandan. If the wind's blowing,
11 everything goes right to Bismarck.

12 COMMISSIONER HAUGEN-HOFFART: Okay.

13 SADIE BRO: From the northwest anyways.

14 I guess I did get this map and this shows where
15 our house is but -- from Summit.

16 Any other questions?

17 ALJ HOGAN: Do you have any other questions?

18 COMMISSIONER CHRISTMANN: Is the pipeline south
19 or north of your house?

20 SADIE BRO: It's straight north.

21 COMMISSIONER CHRISTMANN: Straight north of your
22 house?

23 SADIE BRO: Yeah.

24 COMMISSIONER CHRISTMANN: Thank you.

25 ALJ HOGAN: Mr. Dawson.

1 SUBSTITUTE DECISIONMAKER DAWSON: No questions.

2 ALJ HOGAN: All right.

3 SUBSTITUTE DECISIONMAKER DAWSON: Thank you,
4 Judge.

5 ALJ HOGAN: Thank you.

6 SADIE BRO: Well, thank you, Commissioners.
7 Thank you.

8 COMMISSIONER HAUGEN-HOFFART: Thanks, Sandy.

9 ALJ HOGAN: All right. Are there other
10 landowners or county residents within the counties
11 subject to this hearing?

12 GREG SCHONERT: Good evening.

13 ALJ HOGAN: Good evening. Could I have you
14 state your full name and spell your last name for the
15 record, please.

16 GREG SCHONERT: Yep. My name is Greg Schonert,
17 S-C-H-O-N-E-R-T.

18 ALJ HOGAN: Mr. Schonert, did you hear me go
19 through the penalties for perjury?

20 GREG SCHONERT: Many times over the day, so
21 yeah.

22 ALJ HOGAN: I've got to ask everybody. I'm
23 sorry.

24 GREG SCHONERT: No, that's fine.

25 ALJ HOGAN: And do you understand what perjury

1 is?

2 GREG SCHONERT: Yeah.

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

6 GREG SCHONERT: I do.

7 ALJ HOGAN: All right. Thank you. Go ahead.

8 **GREG SCHONERT,**

9 being first duly sworn, testified as follows:

10 GREG SCHONERT: Like I say, my name is Greg
11 Schonert. I'm a resident of Burleigh County. We live
12 less than a half mile from the proposed pipeline route
13 on the predominantly downwind side. My family's land
14 would be not only directly impacted by the proposed
15 pipeline but also a permanent one-mile access road that
16 they want to place and to use for construction and
17 future maintenance.

18 My wife and two girls, we're in the process of
19 wanting to build our dream home and on land that has
20 been in our family for nearly a hundred years. Instead
21 of being excited for this, we're really concerned with
22 the safety and well-being of not only ourselves but for
23 the other residents of Burleigh County and as well as
24 the citizens of Bismarck, Mandan, emergency responders,
25 and to be absolutely clear, I guess any other homes and

1 communities along the route that are against it.

2 I spent a lot of time researching this project,
3 what it entails, what's enabling it, what's to come, and
4 I would encourage everyone to do the same. It's a deep
5 and dark rabbit hole, but, you know, you need to get
6 informed.

7 You know, I want to clarify I'm not against
8 pipelines. I understand the importance of them. I
9 realize it's the best way to move product for certain
10 commodities. You know, people need to heat their homes,
11 they need fuel for their vehicles and equipment. They
12 need clean drinking water. But, you know, I really
13 struggle to see who needs a highly pressurized carbon
14 dioxide pipeline near their home just because we need to
15 save the ethanol industry under the guise of climate
16 control. I do not believe CO2 belongs in the common
17 carrier category, but that's a discussion for a
18 different time.

19 And I -- I also understand that operators aren't
20 building these things to fail. With that said, I have
21 spent several years in the oil industry back when the
22 boom really took off, three, four years, and I can tell
23 you it's not a secret that pipelines do leak, and
24 there's been a lot of them in North Dakota. I did a
25 quick search on the DEQ website. It turned up over

1 18,000 incidents in the oil field over the last, I think
2 it was 30 years. You know, that averages out to about
3 one a day. Even the best companies have leaks on
4 occasion. And I realize these incidents are specific to
5 petroleum primarily and produced water, etcetera, but,
6 you know, the point being is that when you have an
7 increased infrastructure from an industry, you can
8 expect that leaks are going to happen at some point.

9 One thing I wanted to talk on from the permit
10 application and the discussion on the archaeological
11 surveys and reports and that Summit doesn't want to move
12 the river crossing because of concerns outside of those
13 areas, well, if you look at where that route is, it is
14 smack-dab between Double Ditch Indian Village and the
15 next county road. And when that county road was
16 constructed, whoever was building the project
17 encountered a very significant cultural site. So I'm
18 almost positive, once some earth movement gets going,
19 there's going to be some cultural features discovered in
20 that area.

21 A couple other points on the permit application.
22 I really think that this project should be subject to an
23 environmental impact statement. It would actually allow
24 the public to participate and would thoroughly vet the
25 project.

1 You know, their permit application as it stands,
2 they say they have a lot of permits they need to obtain
3 and they're working on that, but they don't have them at
4 this point. So, to me, it's incomplete.

5 Another blurb that I saw in the permit is that
6 Summit has had additional meetings with individual
7 industrial commissioners to both introduce the project
8 and scope of the project and the sequestration
9 facilities. In my mind, that should have been an open
10 meeting with all three members present.

11 There's a lot we have not heard from Summit, but
12 what we have heard is that sequestering carbon is a
13 matter of life and death for the ethanol manufacturers.
14 Without carbon capture projects, Iowa's ethanol industry
15 will lose 10 billion annually and the loss of production
16 will cut 1 billion bushels of demand for Iowa corn. So
17 it's blatantly obvious that this project is primarily
18 for the ethanol industry. Personally, I don't care
19 about Iowa or their ethanol industry. I care about my
20 state. And I take offense when out-of-state interests
21 want to use eminent domain for their private bank
22 accounts.

23 Summit claims more jobs and tax revenue for
24 North Dakota, but we can't fill the jobs we have open
25 already so I struggle why we need to have more. And

1 we're also doing fine financially. We don't need our
2 taxpayer dollars regurgitated back to us in the form of
3 progress.

4 Another thing, you know, with the dispersion and
5 the plume modeling, I don't quite grasp that that can't
6 be available to the public. It doesn't take a rocket
7 scientist to figure out when a pipeline is constructed,
8 it's very easy to figure out where that is, where the
9 above-ground facilities is. A quick Google Earth search
10 can just look up all the pipe -- pretty much any
11 pipeline in North Dakota. You can see the scar. So I
12 just fail to see why we can't see any plume modeling.
13 And that just goes back to the safety discussions that
14 many people raised earlier.

15 You know, I want to thank the PSC for making
16 sure there are multiple hearings on this project. You
17 know, I know Summit wanted them consolidated into one.
18 And thank you for allowing the public to speak.

19 As you can tell, I'm upset about this proposal.
20 It has created unnecessary stress on myself and family.
21 There are significant safety concerns with this project
22 from an untested operator wanting to build the largest
23 pipeline system in the world. To refute this around the
24 -- especially around the city of Bismarck, Mandan is --
25 is unacceptable in my mind, and on top of that, it's

1 just -- it goes right against the private property
2 rights of North Dakotans and the safety of everyone
3 along its path.

4 I know you have a very tough job with this
5 project, but, you know, by approving it as is, you know,
6 I just think it's setting a precedent that industry
7 trumps the very people who have made North Dakota the
8 great state that it is. It would be sending a clear
9 message that carbon capture and storage projects can
10 proceed with very little public input or acceptance.
11 And I can tell you the bear has been poked and people
12 are really waking up to what's being allowed to happen.
13 In my mind, this has been going on behind the scenes for
14 years to get to this point and it really just irks me.

15 So just please do the right thing and deny this
16 permit as it stands. And that's all I have to say.
17 Thank you.

18 ALJ HOGAN: All right. Thank you.

19 Mr. Bender, any questions?

20 MR. BENDER: No questions.

21 ALJ HOGAN: Mr. Pelham.

22 MR. PELHAM: No questions.

23 ALJ HOGAN: Mr. Bakke.

24 MR. BAKKE: No questions.

25 ALJ HOGAN: Mr. Leibel.

1 MR. LEIBEL: No questions.

2 ALJ HOGAN: Any questions from the
3 commissioners?

4 COMMISSIONER CHRISTMANN: None. Thank you,
5 though.

6 GREG SCHONERT: Thank you.

7 COMMISSIONER HAUGEN-HOFFART: Thank you.

8 ALJ HOGAN: Thank you.

9 Good evening. Can you state your full name and
10 spell your last name for the record?

11 MARTY BEARD: Marty Beard, B-E-A-R-D.

12 ALJ HOGAN: Mr. Beard, did you hear me go
13 through the penalties for perjury earlier?

14 MARTY BEARD: I sure did.

15 ALJ HOGAN: And do you understand what perjury
16 is?

17 MARTY BEARD: I sure do.

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

21 MARTY BEARD: I do.

22 ALJ HOGAN: All right. Thank you. Go ahead.

23 MARTY BEARD,
24 being first duly sworn, testified as follows:

25 MARTY BEARD: My name is Marty Beard. I'm from

1 Stewart, Steele, North Dakota, two miles from the
2 proposed pipeline, and I want to thank you commissioners
3 for listening to the people tonight. Can't tell you how
4 that gives us strength.

5 And I hope that everybody will follow the
6 Constitution and stop this global warming hoax. Our
7 North Dakota congressmen in North Dakota didn't stop it.
8 Our North Dakota legislature in Bismarck didn't stop it.
9 And our Founding Fathers would be disappointed.

10 And the disrespect that Summit pipeline has
11 shown to our Burleigh County Commission and our Burleigh
12 County citizens is inexcusable. This is nothing more
13 than another green energy bribery scam against coal,
14 oil, farming, ranching, and the American taxpayer. If
15 you want to mine coal, you better support CO2. If you
16 want to drill oil, you better support CO2. If you want
17 to raise cattle, you better support CO2. If you want to
18 grow crops, you better support CO2. If you want to heat
19 your homes and drive cars, you better support CO2.

20 Well, I've got news for these people that are
21 fleecing America. Al Gore was wrong. Farting cows are
22 not melting our glaciers and we don't need CO2 pipelines
23 and wind towers to save the world. In fact, they are
24 destroying our American economy and way of life. Every
25 politician bureaucrat and pipeline pimp and fast-talking

1 lawyer that figured out how to make money from green
2 energy should be shamed by this climate lie that they
3 have been using to steal taxpayers' dollars from
4 hard-working American families.

5 I have nothing more.

6 ALJ HOGAN: All right. Thank you.

7 Mr. Bender, any questions?

8 MR. BENDER: No questions.

9 ALJ HOGAN: Mr. Pelham.

10 MR. PELHAM: No questions.

11 ALJ HOGAN: Mr. Schock. Mr. Bakke.

12 MR. BAKKE: No questions.

13 ALJ HOGAN: Mr. Leibel? Any questions from the
14 commissioners?

15 COMMISSIONER CHRISTMANN: Not a question, Your
16 Honor, but I don't want to take away from other people's
17 chance to comment tonight, but sometime I do want to
18 talk to you about coon hunting.

19 MARTY BEARD: Any time. I'd much rather do that
20 than this.

21 (Laughter)

22 ALJ HOGAN: All right. Do we have any
23 landowners or county residents?

24 Good evening. Can I get your full name and will
25 you spell your last name for the record?

1 JASON PULVER: Yes. Jason Pulver. Last name is
2 spelled P-U-L-V-E-R.

3 ALJ HOGAN: Mr. Pulver, did you hear me go
4 through the penalties for perjury earlier?

5 JASON PULVER: Yes.

6 ALJ HOGAN: And do you understand what perjury
7 is?

8 JASON PULVER: I do.

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

12 JASON PULVER: I do.

13 ALJ HOGAN: All right. Thank you. Go ahead.

14 **JASON PULVER,**

15 being first duly sworn, testified as follows:

16 JASON PULVER: As stated, my name is Jason
17 Pulver and I bought land homesteaded by my great
18 grandfather and other lands owned by my family for
19 decades south of Beulah in Oliver County.

20 I am in favor of the Midwest Carbon Express CO2
21 pipeline project. I've signed an option to lease pore
22 space and would welcome any pipeline opportunities.
23 I've had good relations with everyone I've been involved
24 -- that I've been involved with from Summit Carbon
25 Solutions. This pipeline CO2 storage offers my family

1 and our neighbors a chance to utilize our pore space
2 while benefiting the agricultural community with
3 technology that also benefits the area coal-related
4 industries and, in the long term, potentially moving CO2
5 into western North Dakota for oil production
6 enhancement. I also work as a research landman, and
7 projects like these now and in the future help keep
8 people in the industry like me fully employed.

9 I urge the Public Service Commission to approve
10 the route permit. Thanks.

11 ALJ HOGAN: Thank you.

12 Mr. Bender, any questions?

13 MR. BENDER: No. But thank you for your
14 testimony.

15 ALJ HOGAN: Mr. Pelham, any questions? Mr.
16 Schock? Mr. Bakke?

17 MR. BAKKE: No questions.

18 ALJ HOGAN: Mr. Leibel.

19 MR. LEIBEL: No questions.

20 ALJ HOGAN: Any questions from the
21 commissioners?

22 COMMISSIONER CHRISTMANN: Jason, I know you had
23 a -- you have a lot longer drive ahead of you than most
24 here.

25 JASON PULVER: Yes.

1 COMMISSIONER CHRISTMANN: And so thank you for
2 your patience today.

3 JASON PULVER: Thank you.

4 COMMISSIONER HAUGEN-HOFFART: Excuse me, sir.

5 JASON PULVER: Sure.

6 COMMISSIONER HAUGEN-HOFFART: I think I have --
7 not I think. I know I have a comment. It was my
8 understanding that the sequestration storage is not
9 possible to be extracted for further use for oil
10 extraction.

11 JASON PULVER: That is correct.

12 COMMISSIONER HAUGEN-HOFFART: It's just
13 permanent. I thought you --

14 JASON PULVER: That's my understanding, correct.

15 COMMISSIONER HAUGEN-HOFFART: Okay. I thought
16 you said --

17 JASON PULVER: I guess in -- I was stating just
18 that the pipeline itself in the future could potentially
19 move carbon to west -- to the oil fields.

20 COMMISSIONER HAUGEN-HOFFART: Okay. But the
21 pipeline as proposed right now will move it in a
22 storage --

23 JASON PULVER: That's correct. That's correct.
24 That's --

25 ALJ HOGAN: All right. Thank you.

1 All right. Are there any people representing
2 groups either opposed or for the pipeline? Oh, I'm
3 sorry.

4 CHRISTOPHER STALOCH: I'm just a resident.

5 ALJ HOGAN: Come on down. I didn't see you get
6 up so I got ahead of myself.

7 UNIDENTIFIED SPEAKER: Other landowners could
8 kind of come down.

9 ALJ HOGAN: Yep. And if you do want to provide
10 some testimony tonight, you can start making your way
11 down and take a seat in front. That would speed things
12 up as well.

13 Good evening. Could I get your full name and
14 will you spell your last name for the record?

15 CHRISTOPHER STALOCH: Good evening. My name is
16 Christopher Staloch, S-T-A-L-O-C-H.

17 ALJ HOGAN: And, Mr. Staloch, did you hear me go
18 through the penalties for perjury earlier?

19 CHRISTOPHER STALOCH: Yes, I did.

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

22 CHRISTOPHER STALOCH: Yes, I do.

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

1 CHRISTOPHER STALOCH: Yes, I do.

2 ALJ HOGAN: All right. Thank you. Go ahead.

3 **CHRISTOPHER STALOCH,**

4 being first duly sworn, testified as follows:

5 CHRISTOPHER STALOCH: I'm a resident. I live in
6 The Ranch subdivision. I'm one of the fortunate ones
7 who live north of the pipeline who rely on the wind so I
8 should be safe, according to the prevailing winds, which
9 I don't feel safe. I'm here representing my family and
10 myself. This pipeline is a mile and a half away from my
11 house. I send my kids to school at the Silver Ranch
12 subdivision, which is two miles, roughly, I'm guessing,
13 so my kids can't get away from it.

14 There's no -- I don't see any benefit for the
15 public, for the majority of North Dakotans, for this
16 pipeline. We just do not -- like many have already
17 said, we don't benefit from it. They want to compare it
18 to gas, oil, water pipelines. We need those. We want
19 those. It's just a -- it's a bad deal that the
20 government has created to fix a solution that they
21 created a problem with ethanol. And it's -- like many
22 have said, we're going down a rabbit hole.

23 Well, one of the concerns that I had, Summit
24 Carbon Solutions said they're relying on federal
25 regulations. That doesn't give me a warm, fuzzy feeling

1 at all, relying on our Federal Government.

2 So I'm here, hoping at the state level that we
3 can get something done to -- I'm on a different
4 wavelength than most. I don't want it moved. I
5 wouldn't want it in the state because it doesn't help
6 anybody. I don't want to move it north, I don't want to
7 move it south. It would just create problems for other
8 people. It's creating problems for us right now. I
9 don't want to push it on anyone else. I'd rather have
10 it out of the state.

11 They touched on they buy equipment for the first
12 responders. I mean, they'd need all electric fire
13 trucks, police vehicles. I don't know how that's going
14 to work 20 below weather, zero degrees. It's hard to
15 buy that.

16 Bismarck public schools are within this range.
17 Silver Ranch, Sunrise, there's other schools. I'm not
18 sure if there's developed some sort of evacuation plan.
19 How are they going to evacuate all of the kids out of
20 the schools? I'm not -- I'm just not sure on that.

21 And the other thing I'd like to touch on, and I
22 had to leave for a while so maybe it was touched on, but
23 the American Gas Association, I recently received a
24 warning email about pipeline terrorism. So if this was
25 covered, I'm sorry. It's how the -- how the Left plans

1 on saving our planet by blowing up pipelines. There's a
2 book written by Professor Andreas Malm who wrote a book,
3 "How to Blow Up a Pipeline" in a burning world. It's
4 set to be released as a movie April 7th of this year.
5 So that would be another concern. Bismarck, Mandan area
6 would be a prime spot for that to happen.

7 That was just -- I don't know if that was
8 covered or not, but that's -- that's all I have to say.

9 ALJ HOGAN: All right. Thank you.

10 Mr. Bender, any questions?

11 MR. BENDER: No questions.

12 ALJ HOGAN: Mr. Pelham? Mr. Schock? No.

13 Mr. Bakke?

14 MR. BAKKE: No questions.

15 ALJ HOGAN: Mr. Leibel.

16 MR. LEIBEL: No questions.

17 ALJ HOGAN: Any commissioner questions?

18 COMMISSIONER HAUGEN-HOFFART: No. Thank you.

19 ALJ HOGAN: Thank you.

20 Good evening. I'll have you state your full
21 name and spell your last name for the record.

22 KEN HUBER: Yeah. My name is Ken Huber,
23 H-U-B-E-R.

24 ALJ HOGAN: Mr. Huber, did you hear me go
25 through the penalties for perjury?

1 KEN HUBER: I sure did.

2 ALJ HOGAN: Do you understand what perjury is?

3 KEN HUBER: I sure do.

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

7 KEN HUBER: Yes, I do.

8 ALJ HOGAN: All right. Thank you. Go ahead.

9 KEN HUBER,

10 being first duly sworn, testified as follows:

11 KEN HUBER: Thank you. I live about two and a
12 half miles south of the proposed pipeline in north
13 Bismarck in the area of two acres.

14 It really hasn't been mentioned tonight yet, but
15 there's a subdivision north of us that county
16 commissioners are allowing to be built starting this
17 year. Nobody's mentioned it. It's up to 600 homes.
18 And so that is going to go another mile north of where I
19 live and east. So it's closer to the pipeline than I am
20 even. And remember, we're south, directly south, so we
21 know the prevailing winds. So that hasn't even been
22 mentioned tonight.

23 The other thing is when I look at this map that
24 everybody's got a chance to look at, there is really no
25 reason, in my opinion, that you can't go south of

1 Bismarck and go west other than what they're talking
2 about today that, for some reason they can't cross the
3 river, or whatever. I don't know. Nobody's really
4 explained to me exactly why they can't. Instead of
5 surrounding Bismarck like this, it's like throwing a
6 lariat around it and roping them in. No common sense
7 here, the way it looks to me.

8 For the last 20 years I sold building products
9 to contractors in mostly new construction. Where do we
10 go? North Bismarck. Where did houses sell? North
11 Bismarck. And we're taking the prime territory of
12 Burleigh County away by doing this. This is a huge
13 population when you think about it. This is serious.

14 And my neighbors don't know a thing about it.
15 It's kept quiet. Yeah, it's in The Tribune. Nobody
16 reads The Tribune anymore. It's here and there. People
17 don't watch the news like they used to. It's sad. It's
18 really sad. Nobody wants to get involved. And that's
19 why we're relying on you commissioners to help us. And
20 I hope you will.

21 The other thing is I have grandchildren that go
22 to school at the Silver Ranch, but the only time the
23 other school -- Silver Ranch has got 500 students K
24 through -- K through 6 -- or K through 5. I'm sorry.
25 And you have -- with 500 students, you got -- within two

1 miles, you got Sunrise just a little ways away with 500
2 students within two and a half miles, two and a quarter
3 miles. A thousand students, mind you, within three
4 miles of this pipeline. That's huge. And little kids.
5 What more can we ask for, is safety for those children.

6 The other thing is, I appreciate Commissioner
7 Hoffart, I hope I said that right, for talking about
8 public health. Thank you. Nobody's talked about that
9 until you mentioned it. That's what we're talking about
10 here.

11 You're going to destroy a beautiful city. It's
12 the best city in the world to live in. When I was in
13 the -- when I was selling building products, I met with
14 homeowners. And the last three years, how many people
15 said "I moved here because I love it here, I love the
16 people, I love the safety. It's awesome." They move
17 from other cities around the nation. And we're going to
18 allow this to happen in our community? We're going to
19 destroy the best part of the world. Please don't do
20 that. Please think about the safety of us and our
21 children. And just please do the right thing. Thank
22 you.

23 ALJ HOGAN: All right. Thank you.

24 KEN HUBER: The other thing I didn't say -- I'm
25 sorry, I got to go back.

1 ALJ HOGAN: Go ahead.

2 KEN HUBER: I do have agriculture land in Emmons
3 County also that's within two miles of this also. So
4 I'm affected both places.

5 ALJ HOGAN: All right. Thank you.

6 Mr. Bender, any questions?

7 MR. BENDER: No questions.

8 ALJ HOGAN: Mr. Pelham. Mr. Bakke.

9 MR. BAKKE: Just one question.

10 The subdivision that's a mile north of you that
11 is within a mile or so of the proposed pipeline route,
12 what --

13 KEN HUBER: Summit. Summit Point.

14 MR. BAKKE: That's all I have.

15 ALJ HOGAN: All right. Mr. Leibel, any
16 questions?

17 MR. LEIBEL: No questions.

18 ALJ HOGAN: Any questions from the
19 commissioners?

20 COMMISSIONER CHRISTMANN: No.

21 COMMISSIONER HAUGEN-HOFFART: Thank you.

22 ALJ HOGAN: All right. Thank you, Mr. Huber.

23 COMMISSIONER CHRISTMANN: Thank you for your
24 time.

25 ALJ HOGAN: Go ahead, come up.

1 UNIDENTIFIED SPEAKER: Ladies first.

2 ALJ HOGAN: It's just more to try to move
3 testimony along so...

4 UNIDENTIFIED SPEAKER: Sure.

5 ALJ HOGAN: Not holding anybody to categories.
6 Can I get your full name and have you spell your
7 last name for the record.

8 KANDI WHITE: Sure. My name is Kandi White, and
9 that is spelled K-A-N-D-I, W-H-I-T-E.

10 ALJ HOGAN: And Ms. White, did you hear me go
11 through the penalties for perjury earlier?

12 KANDI WHITE: I did.

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

15 KANDI WHITE: I do.

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

19 KANDI WHITE: I do.

20 ALJ HOGAN: All right. Thank you. Go ahead.

21 KANDI WHITE,
22 being first duly sworn, testified as follows:

23 KANDI WHITE: Okay. [Speaking in Hidatsa
24 language.] And I wanted to introduce myself in my
25 Hidatsa language. And so what I said was "Hello

1 relatives. My name is Eagle Woman, but my English name
2 is Kandi White."

3 I'm a citizen of the Mandan Hidatsa Arikara
4 Nation, but I'm a current resident here in Bismarck. I
5 am the director of programs with the Indigenous
6 Environmental Network and so I am representing an
7 organization. I have been employed with IEN for
8 16 years, since the completion of my master of science
9 degree in environmental management.

10 I started this paper, looking at it, saying good
11 morning, and then it turned into good afternoon, and now
12 it's good evening to you, Commissioners and members of
13 the committee. And thank you for inviting me to speak
14 today on this critical issue of Midwest Carbon Express
15 CO2 pipeline.

16 I wanted to reiterate that I have major concerns
17 about the fact that there are 32-plus ethanol plants
18 that are in this project with only one being in North
19 Dakota. I know that was said earlier, but I -- I'm not
20 sure how that's helpful to us here in North Dakota other
21 than us becoming the dumping grounds for the storage of
22 the CO2.

23 So I feel like the level of risk in North Dakota
24 is actually double because not only do we have to worry
25 about the safety of the CO2 pipelines and all of the

1 associated infrastructure along the path of the
2 pipeline, but we also have to worry about the
3 scientifically unproven safety of the long-term storage,
4 which my understanding is we're not getting into that;
5 however, it is a part of the entire project. And I am
6 very concerned about reports coming out by the
7 Intragovernmental Panel on Climate Change around carbon
8 storage and the negative effects it can have on
9 groundwater and water quality and leaks and all these
10 things that can happen when they dispose of, like,
11 injection blowouts which can release large amounts of
12 CO2 at one time. I have to say that. I'd be remiss if
13 I didn't say I'm concerned about this so-called storage,
14 which is an unproven technology, that it's just going to
15 stay there forever and nothing is ever going to happen.
16 We don't know that. It's not scientifically proven.

17 So as we've already heard by testimony this
18 morning from Mr. Powell, Jimmy, on your website you do
19 say that it's the Pipeline and Hazardous Material Safety
20 Administration, PHMSA, that would ensure that Summit
21 builds a pipeline that has, quote, "Very, very low
22 probability," unquote, of dangerous failure.

23 And I do want to touch on this again about
24 Silver Ranch because I am currently living in an
25 apartment with my two dogs and two children and husband

1 because I'm too scared to buy a house in Silver Ranch,
2 which is what we were intending to do. As I started
3 learning about this project and send my kids to the
4 elementary school there, when you said, quote, "We feel
5 comfortable with the risk," I was very hurt. You should
6 be very aware of saying things like that, especially
7 since you're from Texas and you're representing an
8 organization from Iowa. I don't -- I think you should
9 be careful about what you say.

10 But I digress from that. I -- I want to talk
11 about safety and about PHMSA who would ensure the safety
12 of this pipeline, but I want to look at it outside of
13 your words there, Jimmy.

14 So I did some research of my own and I came
15 across a man by the name of Bill Caram. I think this is
16 what one of the testifiers was referring to earlier.
17 He's the executive director of Pipeline Safety Trust.
18 They are an independent national watchdog organization
19 over the pipeline industry and its regulators. And it
20 was created with money set aside by the recommendations
21 from the U.S. Justice Department after the Olympic
22 Pipeline tragedy in Bellingham, in Washington, which led
23 to the death of three children, three young boys.

24 Mr. Caram just testified last week in front of
25 the U.S. House of Representatives about pipeline safety.

1 He also gave a Zoom presentation in which people who
2 attended were able to take that information and share
3 with you today, which is what I'm doing.

4 We talked about pipelines a lot. Oh, they're
5 the same, they're the same, you know. This pipeline,
6 CO2 pipeline, is similar to natural gas. Well, in that
7 case, Mr. Caram had shared that since Congress passed
8 the PIPES Act of 2020, there have been 1,300 reportable
9 pipeline failures, more than one per day. 74 people
10 have either been killed or injured to the point of
11 in-patient hospitalization, and there has been nearly \$1
12 billion in property damage.

13 What they did within his organization was they
14 used PHMSA's own data going back to 2010 for both
15 pipeline incidents and significant pipeline incidents.
16 Their studies from that data show trends of incidents
17 going down very slightly. There's basically a flat line
18 with no real progress over the past 12 years in safety.
19 Worse yet, when they filtered for only incidents deemed
20 significant by PHMSA, the trend is actually slightly
21 increasing in incidents over the past 12 years. He also
22 points out that of great concern is the fact that
23 approximately two-thirds of all incidents and
24 significant incidents are from causes that are under the
25 operators' direct control, such as corrosion, incorrect

1 operations, equipment failures, and problems with
2 materials, welds, and equipment.

3 But let's dive back into carbon capture and
4 storage. How is it viable? Why is it viable for North
5 Dakota? How do we make it viable? And talking about
6 the climate crisis, I know that Hoffart, you pointed out
7 climate mitigation. I didn't hear many people talk
8 about the climate crisis.

9 Well, in order to make this a viable solution to
10 the climate crisis, we would have to scale up very, very
11 quickly. Indeed, if Midwest Carbon Express was approved
12 with the capacity to carry 18 million tons of CO2 per
13 year, be the largest project, we've talked about that,
14 Summit Carbon Solutions here points out on their website
15 that they would need to multiply carbon capture storage
16 by 125 times over the current levels to achieve any sort
17 of goal of net-zero emissions by 2050, which would be
18 needed to limit warming to 1.5 degrees celsius. That is
19 a massive acceleration from what at this point is still
20 in many ways a science experiment.

21 Which begs the question, how do we detect and
22 prevent potential issues as pointed out by the IPCC for
23 deep underground storage, for pipeline ruptures,
24 especially when this type of infrastructure would need a
25 hundred new sites to be developed every year? It is

1 very critical to note that safety is and should be a
2 huge concern.

3 And with PHMSA I have major concerns because
4 they have had large increases in Congressional mandates
5 without a corresponding increase in funding. So, for
6 example, nearly 100,000 miles of gas-gathering lines
7 have finally come under PHMSA regulations and another
8 approximately 300,000 miles are under new reporting
9 requirements. Add to that this new generation of
10 pipelines carrying carbon dioxide which requires new
11 expertise and personnel, and you can clearly see the
12 problems that we're going to have there. Now, state
13 programs are currently responsible for more than
14 80 percent of the nation's pipeline mileage and are
15 expressing the squeeze on them.

16 So what happened is, in 2015, a political
17 investigation found that PHMSA as an agency, which has
18 been considered underfunded and understaffed, and,
19 quote, "lacks the manpower to inspect the nation's oil
20 and gas lines, that grants the industry that it
21 regulates significant power to influence the rule-making
22 process, and that has stubbornly failed to take a more
23 aggressive regulatory role, even when ordered by
24 Congress to do so."

25 And what I wanted to tell basically was this

1 organization, the Pipeline Safety Trust, did a report in
2 March of last year. It's called Accufacts Inc.,
3 "Accufacts' Perspectives on the State of Federal Carbon
4 Dioxide Transmission Pipeline Safety Regulations as it
5 Relates to Carbon Capture, Utilization, and
6 Sequestration within the U.S." This report --

7 ALJ HOGAN: Ms. White, I don't want to interrupt
8 you. I don't know how much --

9 KANDI WHITE: I'm almost done.

10 ALJ HOGAN: Okay. Go ahead.

11 KANDI WHITE: This report is critical because
12 the current definition of carbon dioxide in the federal
13 pipeline safety regulation does not apply to all CO2
14 pipelines that may be developed for CCS projects.
15 Currently, only CO2 that is moved in a super critical
16 state is regulated under the current definition, meaning
17 gaseous and liquid CO2 pipelines are not currently
18 regulated.

19 There's currently no defined safe distance or
20 plume dispersion model for developing a potential impact
21 radius along CO2 pipelines. CO2 has unique physical
22 properties which warrant the development of a unique PIR
23 zone to be promulgated into federal pipeline regulation.
24 There's no requirement currently needed to add odorant
25 to the transportation even though we've heard that it's

1 odorless, colorless, doesn't burn, is heavier than air.

2 Also, the unique physical properties of CO2
3 moving at high pressure through pipelines can cause
4 ductile fractures upon rupturing. This essentially
5 means that a pipe has a higher likelihood of opening up
6 like a zipper when a rupture occurs, leading to more
7 product being released over a shorter period of time and
8 potentially violent and dangerous shrapnel.

9 So we didn't talk that much about the health,
10 but it is an asphyxiant. It displaces ambient oxygen.
11 It makes it difficult to breathe. You can have
12 coughing, dizziness, a panicky feeling called "air
13 hunger," and it can lead to coma and then death.

14 And so we didn't talk that much -- we didn't
15 want to talk again about what happened in Mississippi,
16 but there are instances of huge carbon dioxide emissions
17 going out in naturally occurring ways like what happened
18 in Lake Nyos in Cameroon, Africa. This was in 1986.
19 This was a natural disaster.

20 ALJ HOGAN: Ms. White, I'm going to stop you
21 there.

22 KANDI WHITE: Okay. Can I finish --

23 ALJ HOGAN: I think we're too far off the --

24 KANDI WHITE: -- the last -- can I do in
25 conclusion then?

1 ALJ HOGAN: If you're quick, very quick.

2 KANDI WHITE: Earlier, you had -- a man had
3 mentioned that he said influction -- I'm not sure what
4 he said, but it's the Inflation Reduction Act that he
5 was referring to. And so that's a federal tax credit
6 which means that the company would have access to all
7 these. I was trying to figure out why this company
8 wants to be here. Basically, the company, they're not
9 looking for the best interest of North Dakotans but the
10 bottom line of the money that they can make off of this
11 project.

12 And so I just feel like in this day and age when
13 we're looking at the ability to deal with maybe having
14 actual renewable energy, instead we're looking at carbon
15 sequestration projects that give us a window of missed
16 opportunity. And I feel like renewable energy projects
17 just might be the saving grace for the future of the
18 life on the planet as we know it.

19 And I just want to say I'm sick and tired of
20 North Dakota being the dumping grounds for projects that
21 don't give us anything in return. We're looking at
22 destroying the beautiful areas that people have talked
23 about for what, 35 jobs? It doesn't add up. And I
24 really hope you just don't approve the project at all.
25 I hope that you can see -- and I'll share this paper

1 with you. And I'm sorry that it got so long. I've just
2 been here since 8:30, as well as you, and can share so
3 that you have the links and the stuff that I was talking
4 about. And I'm sorry that I had to talk so fast to
5 everybody in the audience because I had a lot of facts
6 and statistics that I wanted to share.

7 ALJ HOGAN: All right. Thank you.

8 Mr. Bender, any questions?

9 MR. BENDER: No questions.

10 ALJ HOGAN: Mr. Pelham. Mr. Bakke.

11 MR. BAKKE: No questions.

12 ALJ HOGAN: Mr. Leibel.

13 MR. LEIBEL: No questions.

14 ALJ HOGAN: Any questions from the
15 commissioners?

16 COMMISSIONER CHRISTMANN: Thank you.

17 COMMISSIONER HAUGEN-HOFFART: Thank you.

18 ALJ HOGAN: Thank you, Ms. White.

19 GAYLYNN BECKER: I'm Gaylynn Becker, and Becker
20 is spelled B-E-C-K-E-R.

21 ALJ HOGAN: Mr. Becker, did you hear me go
22 through the penalties for perjury earlier?

23 GAYLYNN BECKER: Yes.

24 ALJ HOGAN: And do you understand what perjury
25 is?

1 GAYLYNN BECKER: Yes.

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

5 GAYLYNN BECKER: Yes.

6 ALJ HOGAN: All right. Thank you. Go ahead.

7 GAYLYNN BECKER,

8 being first duly sworn, testified as follows:

9 GAYLYNN BECKER: Thank you. I live northeast
10 Bismarck, half a mile from the Sunrise Elementary
11 School, the previous person spoke about, which is close
12 to Silver Ranch School and Development.

13 These things are my opinion on what I've
14 noticed. And one of the things is you guys have -- and
15 gals have an unbelievably important big decision to
16 make, unlike any that you've made in North Dakota
17 before.

18 I hope that you as a Public Service Commission
19 can obtain answers to some of the following concerns
20 that I have. And I'm not going to mention all of them
21 because of time, but what are the benefits to North
22 Dakota? What is the big benefit for it? I don't know
23 of any. What are the risks and pitfalls for North
24 Dakota with this pipeline and storage? Who's liable for
25 an accidental leak in one year from now, ten years from

1 now, 12, 15, 20 years from now? Do you want to pass on
2 this liability to our children and grandchildren,
3 etcetera?

4 The last few weeks I've heard reports and
5 meetings I've been to, and all I can say is I've seen in
6 the -- in my lifetime bullying going on for people of
7 all ages. Is this pipeline company bullying us by
8 threatening landowners with lawsuits if they don't let
9 them sign over their land access? Is this company also
10 bullying townships, counties, cities, and the State of
11 North Dakota in a similar manner?

12 Is this just the first carbon dioxide pipeline
13 that will be laid here in North Dakota? Will they lay
14 them again right along this same area to fill up all of
15 -- all of western North Dakota? How many other
16 pipelines will follow with even bigger threats and
17 dangers and threats of lawsuits? If we allow this
18 pipeline to go through and with all the dangers of which
19 we are now aware, how will we stop future pipelines with
20 equally or more dangerous exposures?

21 If you're going to allow this pipeline in North
22 Dakota, I recommend you have it at a minimum of ten feet
23 below the ground.

24 And what is the real purpose of the pipeline?
25 Is it really preventing CO2 from getting in the

1 atmosphere or the stratosphere? We have to ask
2 ourselves what are we really doing?

3 The rest of the country and the world are making
4 North Dakota a dangerous garbage waste dump. It will be
5 a threat to not only us but our children and
6 grandchildren and great grandchildren, etcetera. I'm
7 appalled that these green energy renewable resource
8 dangerous waste products are going to be dumped here in
9 our backyard here in North Dakota. Where are so-called
10 green energy waste products being dumped? Your decision
11 will make a precedent again.

12 And my last statement is what in blazes are we
13 doing to our state?

14 Thank you for your time and listening, and God
15 bless you and guide you in your decision-making process.

16 ALJ HOGAN: All right. Thank you.

17 Mr. Bender, any questions?

18 MR. BENDER: No questions.

19 ALJ HOGAN: Mr. Pelham.

20 MR. PELHAM: No questions.

21 ALJ HOGAN: Mr. Bakke.

22 MR. BAKKE: No questions.

23 ALJ HOGAN: Mr. Leibel.

24 Any questions from the commissioners?

25 COMMISSIONER HAUGEN-HOFFART: Thank you so much.

1 COMMISSIONER CHRISTMANN: Thanks, Gaylynn.

2 GAYLYNN BECKER: You're welcome. Thank you.

3 ALJ HOGAN: Thank you.

4 UNIDENTIFIED SPEAKER: Your Honor, could we pass
5 out --

6 ALJ HOGAN: Yep.

7 UNIDENTIFIED SPEAKER: -- handouts?

8 ALJ HOGAN: Can I get your full name and if you
9 want to spell your last name for the record?

10 LARRY SMITH: I'll make this one easy. Larry
11 Smith, S-M-I-T-H.

12 ALJ HOGAN: Probably didn't need you to spell
13 that one, huh? Mr. Smith, did you hear me go through
14 the penalties for perjury earlier?

15 LARRY SMITH: Yes, I did, Your Honor.

16 ALJ HOGAN: And do you understand what perjury
17 is?

18 LARRY SMITH: Sure do.

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

22 LARRY SMITH: I do.

23 ALJ HOGAN: All right. Thank you. Go ahead.

24 LARRY SMITH,

25 being first duly sworn, testified as follows:

1 LARRY SMITH: Like I said, my name is Larry
2 Smith. I'm a professional land surveyor in North
3 Dakota. Been doing this all my career. And I have the
4 pleasure of having with me Mr. Rob Illg, he's a PLS and
5 also president of our society, and Brett Zeltinger,
6 who's also a PLS and he's the vice president of our
7 society.

8 And this letter may have been to the PSC, sent
9 out to you, but just -- I'd like to read it. It says:

10 "Dear Chair, The North Dakota Society of
11 Professional Land Surveyors, NDSPLS, encourages that all
12 utility corridor easements within the state of North
13 Dakota be strip easements, not blanket easements for all
14 utilities, such as, but not limited to, overhead and
15 underground electrical lines and water, oil and gas
16 pipelines.

17 "Blanket type easements create needless
18 servitudes, or non-appurtenant restrictions on the
19 grantor's use of real property over aliquot parts of a
20 section where a strip easement would satisfy the
21 easement needs of the grantee.

22 "North Dakota State Department of Trust Lands
23 and Federal Lands do not allow for the use of blanket
24 easements on their land holdings. Furthermore,
25 practicing professional land surveyors follow these

1 guidelines:

2 "The State of North Dakota already has
3 requirements codified for licensed land surveyors to
4 follow under North Dakota Century Code 47-05-02.1.

5 "Land surveyors are bound by the North Dakota
6 Administrative Code 28-02.1-13-01: Survey requirements
7 for the preparation of legal descriptions and the
8 conveyance of property.

9 "Land surveyors are bound by the North Dakota
10 Attorney General's Opinion 2017-L-03, dated May 12,
11 2017, indicating that pursuant to North Dakota Century
12 Code 43-19.1-30, the items which need to be included as
13 exhibits relevant to documents or attachments, as well
14 as when they are the main documents being recorded.
15 These documents must include the signature and seal of a
16 North Dakota registered professional land surveyor, even
17 if the document is part of an exhibit or an attachment
18 to an easement.

19 "NDSPLS encourages the use of the North Dakota
20 State Plane Coordinate System, per North Dakota Century
21 Code 47-20.2, as the base coordinate system used for a
22 universal survey mapping system.

23 "We are requesting the Public Service Commission
24 to review all aspects of all utility easements and to
25 ensure that all current laws and rules for easements in

1 North Dakota are followed as part of the review and
2 permit process.

3 "Respectfully submitted, the North Dakota
4 Society of Professional Land Surveyors."

5 And, Your Honor, attached to the back of this is
6 all the Century Codes that are quoted in the letter so
7 you don't have to look them up.

8 ALJ HOGAN: All right. Thank you. Does that
9 conclude your testimony?

10 LARRY SMITH: Yes. Other than questions.

11 ALJ HOGAN: Mr. Bender, any questions?

12 MR. BENDER: No questions.

13 ALJ HOGAN: Mr. Pelham.

14 MR. PELHAM: So does your commission have a
15 position on something that Summit Carbon Solutions is
16 doing incorrectly here? Is that -- that's what this is
17 saying? Or are you saying that they're doing this
18 wrong?

19 LARRY SMITH: I am speaking for the society.
20 And what we are -- first of all, let's say we're neutral
21 on the pipeline. We're not for it, we're not against
22 it. What we're saying is we'd like to have these rules
23 followed.

24 MR. PELHAM: Sure. So is there -- is there --
25 because I mean in other pipeline projects the society

1 doesn't send a letter like this. What's the problem
2 here specifically to this line?

3 LARRY SMITH: It came up at our state convention
4 in Dickinson in February, this topic did, and that's
5 what generated this. Am I answering the question
6 correctly?

7 MR. PELHAM: Yeah. And we had some earlier
8 testimony from the company as to, you know, this
9 particular letter and its position as to, you know, its
10 compliance, its belief that its compliance with the law.
11 So I'm just wondering if the society is taking a
12 position that there is not compliance being done here
13 with easement acquisition and recording of memorandas in
14 the county recorder offices.

15 LARRY SMITH: What we have seen, or multiple
16 surveyors in the state, is an easement over all of
17 section 35 and a graphic illustration of that, but that
18 is not filed. And the landowner may not even have a
19 copy of the map.

20 MR. PELHAM: Okay.

21 LARRY SMITH: Does that answer the question well
22 enough?

23 MR. PELHAM: I think so. Thank you.

24 ALJ HOGAN: Mr. Bakke, any questions?

25 MR. BAKKE: Yes.

1 Mr. Smith, was this letter written in regards to
2 concerns that your members had with the way that Summit
3 was pursuing easements and not doing surveys in the
4 correct manner in compliance with the applicable
5 standards for professional land surveyors in North
6 Dakota?

7 LARRY SMITH: Yeah. That was brought to our
8 attention. Or yes, it was brought to our attention.

9 MR. BAKKE: And so this letter was written in
10 direct response to concerns by your organization and its
11 members that Summit was not following the applicable
12 rules that professional land surveyors follow in North
13 Dakota for any surveys for the easements they were
14 obtaining?

15 MR. BENDER: Your Honor, I'm going to object.
16 We started this this morning with this sort of
17 questioning and there was an objection by counsel for
18 the Commission and he put a stop to it. I'm going to
19 raise that objection now. It has nothing to do with
20 what the Commission is going to be deciding in this
21 matter.

22 ALJ HOGAN: I think that's right. I think he's
23 addressed the concern for why the letter was written.

24 MR. BAKKE: That's fine. The only reason I
25 raise that is that the other witness, Mr. McCown, said

1 he thought they -- they had complied with everything
2 that they were supposed to or would be.

3 MR. BENDER: That wasn't Mr. McCown's testimony.
4 That was Mr. Rorie's testimony.

5 MR. BAKKE: I'm sorry, it was Mr. Rorie.

6 ALJ HOGAN: All right. Mr. Leibel, did you have
7 any questions?

8 MR. LEIBEL: No questions.

9 ALJ HOGAN: Any questions from the
10 commissioners?

11 COMMISSIONER CHRISTMANN: I do.

12 ALJ HOGAN: Go ahead, Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: I'm trying to piece
14 this together. So someone brought it up at your annual
15 meeting or association meeting, however you referred to
16 it, and so you wrote this letter to the Commission and
17 came and testified now, but have you had any discussions
18 with the company to explain what you think they should
19 be doing differently?

20 LARRY SMITH: Mr. Chairman, I did not write.
21 This letter was prepared and approved by our board of
22 directors. This came from the society board of
23 directors, a vote of all the members. Okay. So I did
24 not write this. I was directed by our professional
25 society to present this to the commissioners on this

1 day.

2 COMMISSIONER CHRISTMANN: Was it ever presented
3 to the company or was it just presented to your group
4 meeting and the proposal was to write a letter and have
5 you present it?

6 LARRY SMITH: I believe that was passed on to
7 Mr. Nehring at various commission meetings.

8 COMMISSIONER CHRISTMANN: Okay. Thank you.

9 LARRY SMITH: Hallway conversation.

10 ALJ HOGAN: Commissioner Hoffart.

11 COMMISSIONER HAUGEN-HOFFART: I have a comment.
12 The last paragraph in your question saying "We are
13 requesting the Public Service Commission to review all
14 aspects of all utility easements," we don't have that
15 authority.

16 So what -- if you're making a new request, that
17 type of request, that doesn't come before this type of a
18 hearing. That might be something that you want to work
19 with our legal counsel on, if you have proposed, you
20 know, legislation and jurisdiction and stuff like -- you
21 know, in that capacity. I think there's two separate
22 things going on here. The statement that I just made in
23 the direction that you need to take, and if there's --
24 and I think Commissioner Christmann addressed that I
25 think you're the messenger on --

1 LARRY SMITH: I am.

2 COMMISSIONER HAUGEN-HOFFART: -- some of this
3 stuff that has to do with Summit Carbon.

4 So I'm just going to caution you on this last
5 paragraph, is that we're not going to get involved in
6 the easements here. So I want to be very clear on that.
7 That's not under our jurisdiction.

8 LARRY SMITH: Yes. And we -- we realize that.

9 COMMISSIONER HAUGEN-HOFFART: Okay.

10 LARRY SMITH: But our organization felt strongly
11 enough that we should bring it to your attention. We
12 realize that that's outside your mission statement or
13 scope or whatever, but they still felt strongly it
14 should be presented.

15 COMMISSIONER HAUGEN-HOFFART: I'll direct it to
16 the Chair to deal with this with our legal counsel as he
17 sees fit for this.

18 ALJ HOGAN: Thanks. Any other questions?

19 All right. Thank you, Mr. Smith.

20 LARRY SMITH: Thank you so much.

21 COMMISSIONER HAUGEN-HOFFART: Thank you.

22 ALJ HOGAN: All right. Can I get your name and
23 can you spell your last name for us.

24 JASON BOHRER: Jason Bohrer, B-O-H-R-E-R.

25 ALJ HOGAN: Mr. Bohrer, did you hear me go

1 through the penalties for perjury earlier?

2 JASON BOHRER: I did not hear them with my own
3 ears, but I'm familiar with them and know them.

4 ALJ HOGAN: All right. Do you understand what
5 perjury is?

6 JASON BOHRER: I do.

7 ALJ HOGAN: Being advised of the potential
8 penalties for perjury, do you promise to tell the truth
9 in this case today?

10 JASON BOHRER: Yes, I do.

11 ALJ HOGAN: All right. Thank you. Go ahead.

12 **JASON BOHRER,**

13 being first duly sworn, testified as follows:

14 JASON BOHRER: My name is Jason Bohrer. I'm the
15 president of the Lignite Energy Council which represents
16 the coal industry in North Dakota and, as such, my
17 testimony is going to be rather limited because I
18 recognize the scope of this isn't necessarily directed
19 toward the coal industry. There is some overlap,
20 however, and to that I wanted to speak while keeping my
21 testimony relatively brief.

22 As we pursue objectives that rely upon
23 developing an infrastructure related to CO2, we see the
24 project that -- this project as part of the path to the
25 future. However, more importantly and kind of more to

1 the bulk of what I actually wanted to comment on is
2 testifying regarding the health and safety aspect and
3 review that you guys are involved in.

4 We believe that there are no -- there are no
5 significant health and safety justifications that would
6 justify denying this permit at this time. According to
7 a recent journal from the International Journal of
8 Greenhouse Gas Regulations, CO2 pipelines are among the
9 most, if not the most, safe pipelines there are that are
10 used in everyday life.

11 So having said that, while I can't guarantee
12 that this project will directly help the coal industry,
13 I think it will, but I can tell you that denying the
14 permit on the basis of health and safety will set the
15 industry back. And with that, I would conclude my
16 testimony.

17 ALJ HOGAN: All right. Thank you.

18 Mr. Bender, any questions?

19 MR. BENDER: No questions, but thank you for
20 your testimony.

21 ALJ HOGAN: Mr. Pelham, any questions?

22 MR. PELHAM: No questions.

23 ALJ HOGAN: Mr. Schock. Mr. Bakke, any
24 questions?

25 MR. BAKKE: Yes, just very briefly.

1 Mr. Bohrer, neither you or the lignite industry
2 is taking a position as to where this particular
3 pipeline should be routed if it's allowed, is it?

4 JASON BOHRER: That is a correct statement.

5 MR. BAKKE: Nothing further.

6 ALJ HOGAN: Mr. Leibel, any questions?

7 MR. LEIBEL: No questions.

8 ALJ HOGAN: Any questions from the
9 commissioners?

10 COMMISSIONER HAUGEN-HOFFART: No.

11 COMMISSIONER CHRISTMANN: No. Thanks, Jason.

12 COMMISSIONER HAUGEN-HOFFART: Thank you, Jason.

13 ALJ HOGAN: Thank you, Mr. Bohrer.

14 Good evening. Could I get your -- have you
15 state your full name and spell your last name for the
16 record.

17 DON MORGAN: Don Morgan, M-O-R-G-A-N.

18 ALJ HOGAN: Mr. Morgan, did you hear me go
19 through the penalties for perjury earlier?

20 DON MORGAN: Yes, ma'am.

21 ALJ HOGAN: Do you understand what perjury is?

22 DON MORGAN: Yes, I do.

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

1 DON MORGAN: Yes, I do.

2 ALJ HOGAN: All right. Thank you. Go ahead.

3 DON MORGAN,

4 being first duly sworn, testified as follows:

5 DON MORGAN: Good evening. My comments will be
6 brief. I am simply a concerned property owner,
7 concerned citizen on the north side of Bismarck. We own
8 40 acres just north of 110th, the proposed route of the
9 Summit pipeline. It travels probably 750 feet north of
10 our northern edge of our property.

11 I do want to state I have nothing against
12 pipelines whatsoever. I think they're a very safe way
13 to transport many things, much safer than trucking and
14 rail and others. So my concern is more with the route.

15 When I look at the map of North Dakota and I see
16 all the rural land that's available outside, far
17 outside, our city capitol, and when I see the route
18 cutting across the northern side of our city's capitol,
19 which is -- I mean, we all know Bismarck, unless they
20 open up the east exit off the interstate, Bismarck's
21 going north with its development. I mean, you got The
22 Ranch coming on, you got Heritage Reserve, you got many
23 others. And that's prime development land. It's for
24 the expansion of our city going forward. And to cut a
25 pipeline with, I understand, 500-foot setbacks and all

1 the intricacies that that involves right through the
2 heart of that prime development land, it just doesn't
3 make any sense to me. I think, you know, I know lots of
4 ranchers ten miles further out that would be happy to
5 run a pipeline and get paid to run it through their crop
6 fields and plant corn right over the top of it.

7 So my concern is with the route more than
8 anything. And I urge you, I urge you to move it outside
9 of Bismarck. It can severely affect the future growth
10 of Bismarck and I would hate to see that happen,
11 especially with the prime real estate that it is.

12 I thank you for your time. You guys had a long
13 day. And I'm going to end there.

14 ALJ HOGAN: All right. Thank you.

15 Mr. Bender, any questions?

16 MR. BENDER: No questions.

17 ALJ HOGAN: Mr. Pelham.

18 MR. PELHAM: No questions.

19 ALJ HOGAN: Mr. Bakke.

20 MR. BAKKE: No questions.

21 ALJ HOGAN: Mr. Leibel.

22 MR. LEIBEL: No questions.

23 ALJ HOGAN: Any questions from the
24 commissioners?

25 Go ahead, Commissioner.

1 COMMISSIONER CHRISTMANN: Don, I missed, how far
2 did you say your house is from the pipeline?

3 DON MORGAN: It looks like it will run a
4 thousand feet of our -- the northern edge of our
5 property.

6 COMMISSIONER CHRISTMANN: Okay. Thank you.

7 DON MORGAN: Yep.

8 COMMISSIONER HAUGEN-HOFFART: Thank you.

9 DON MORGAN: Yeah.

10 ALJ HOGAN: Thank you.

11 Good evening. Could you state your full name
12 and spell your last name for the record?

13 TROY COONS: My name is Troy Coons, C-O-O-N-S.

14 ALJ HOGAN: Mr. Coons, did you hear me go
15 through the penalties for perjury earlier?

16 TROY COONS: Yes.

17 ALJ HOGAN: And do you understand what perjury
18 is?

19 TROY COONS: Yes.

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

23 TROY COONS: Yes.

24 ALJ HOGAN: All right. Thank you. Go ahead.
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TROY COONS,

being first duly sworn, testified as follows:

TROY COONS: Commissioners, Judge Hogan, thank you for giving me the opportunity to talk this evening. I've scribbled on my notes so much all day long that I don't have hardly anything left that I started with, but I have some comments that I want to get out tonight.

I represent over 500 farm and ranch families as when I wrote this a few days ago. I believe in the last less than a week we've gained over 110 members mainly due to this project with the concerns and level of concerns out there. And so that makes a large statement to me of what's going on here.

I'm not here to speak in opposition to this project, but I am here to speak in support of landowner rights. Our organization has worked for several years in representing the interests of North Dakota landowners. Because of that, we often have lots of calls from landowners when large pipeline projects come through, which we worked heavily with the Sandpiper, which did not happen. We worked on the Cenex pipeline. So we have a lot of experience with this.

We have also noticed a number of calls with concerned landowners increasing in the talking of the use of eminent domain. We hear that over and over and

1 over again. Most of us know that North Dakotans don't
2 like eminent domain. A federal judge in North Dakota
3 recently said, I'm quoting, From farming to the original
4 homesteads, it's in the blood of North Dakota landowners
5 to protect their real estate. We have a long tradition
6 in North Dakota of protecting our land.

7 We ask the Commission to work with all local
8 entities, the counties, the townships, the cities. We
9 ask you to take that into heavy consideration as you
10 move forward with this.

11 We also ask the industry to not access the land
12 without written permission. That's been a big concern
13 of things that are happening. We just ask, work with
14 the property owners.

15 Another thing we want to mention is we ask that
16 this project is not permitted until it reaches what we
17 call a Grade A project. We've dealt with many, many
18 projects, as I mentioned earlier, and there was many,
19 many items at the legislative session just a couple
20 weeks ago when people went to the podium from many
21 different facets of industry and said it's easy to
22 obtain 90 percent of the property owners that they need.

23 So, with that, we're asking you to hold this
24 project to that same level of 90, 93 percent. You know,
25 just in the common sense part of it, it only makes sense

1 if that's a good project. When we're talking numbers of
2 41 percent, 50 percent, 61 percent, in almost anything
3 in life, that's a failing grade.

4 And so with that, I cut mine way, way short.
5 One last comment is I think we missed out on many, many,
6 many other good items from the citizens today just on
7 how the day went. I would hope maybe you could
8 interject some citizen testimony in the future ones
9 partway through the day. You know, when you get at this
10 amount of time, I had people tell me they had to go home
11 for medications, feed their cows, all of these things.
12 I understand that, you know, everything that happened
13 with all the questions today, but still I would like to
14 see this part possibly more balanced from the citizens.

15 And, with that, I'll stand for any questions.

16 ALJ HOGAN: All right. Thank you.

17 Mr. Bender, any questions?

18 MR. BENDER: I do have a couple questions.

19 Mr. Coons, you talked about some testimony that
20 was presented, I believe it was before the legislature,
21 on how industry had indicated they were able to secure
22 90 percent. Was that 90 percent of the easements or 90
23 percent of the pore space leases?

24 TROY COONS: There we were talking about
25 easements.

1 MR. BENDER: I think you're mistaken. I think
2 you should go back and review that testimony. I believe
3 the 90 percent was the 90 percent of the pore space
4 leases. I don't think there's been any testimony
5 anywhere having to do with securing 90 percent of the
6 easements.

7 TROY COONS: Can I respond?

8 ALJ HOGAN: Yes.

9 TROY COONS: So there was testimony as we've
10 went through a lot of these bills on both parts of that.
11 And I guess with that question, just in response to
12 that, is our organization, as most of the committee here
13 probably knows, we are definitely not in favor of the
14 use of eminent domain for taking for the siting and
15 routing of a project or the taking for the use of pore
16 space.

17 MR. BENDER: What hearing or what bill number
18 was heard when you heard the testimony about 90 percent
19 for easements?

20 TROY COONS: I will have to get back to you with
21 that. I did not bring that with me.

22 MR. BENDER: Okay. No further questions.

23 ALJ HOGAN: Mr. Pelham, any questions?

24 MR. PELHAM: Just for the record, could you
25 state the name of your organization, sir?

1 TROY COONS: Northwest Landowners Association.

2 MR. PELHAM: Thank you.

3 TROY COONS: And we do have members across the
4 whole state.

5 ALJ HOGAN: Mr. Schock, any questions?

6 Mr. Bakke, any questions?

7 MR. BAKKE: No questions.

8 ALJ HOGAN: Mr. Leibel, any questions?

9 MR. LEIBEL: No questions.

10 ALJ HOGAN: Any commissioner questions?

11 COMMISSIONER CHRISTMANN: To be clear, though,
12 for guidance for us who have established a history of
13 following the law, the proposals that were up as far as
14 putting further requirements on limitations on eminent
15 domain or things like that, the legislature turned all
16 those down; is that correct?

17 TROY COONS: Yes. Very -- very resoundly.

18 ALJ HOGAN: Commissioner?

19 COMMISSIONER HAUGEN-HOFFART: No. Commissioner
20 Christmann made that point, that I think they were
21 trying to establish thresholds on that, and that's what
22 failed.

23 TROY COONS: Yes. We were heavily involved in
24 that and we were looking at thresholds. Again, that's
25 where my comments come to the grade of the project. You

1 know, if they're at 41 percent or 50 percent, we feel
2 that's kind of like a failing grade on a project.
3 That's where we come forward with different numbers of
4 85 percent or 90 percent as what we were proposing.
5 Then we felt like the property owners and citizens of
6 the state felt like it was a good project because they
7 had signed up.

8 COMMISSIONER HAUGEN-HOFFART: So try -- can I
9 make another comment? Just to be clear right now in our
10 siting statute and what we have to look at, there's no
11 thresholds in that regarding those easements.

12 TROY COONS: Correct.

13 COMMISSIONER HAUGEN-HOFFART: Okay. Do you
14 understand that?

15 TROY COONS: I do understand that.

16 COMMISSIONER HAUGEN-HOFFART: Okay. Thank you.

17 ALJ HOGAN: Any questions?

18 UNIDENTIFIED SPEAKER: No questions, Judge.

19 ALJ HOGAN: Okay. Thank you, Mr. Coons.

20 TROY COONS: Thank you for the opportunity.

21 ALJ HOGAN: Thank you.

22 Hi. Can I get you to state your full name and
23 spell your last name?

24 SHANDA MORGAN: Shanda Morgan, M-O-R-G-A-N.

25 ALJ HOGAN: And, Ms. Morgan, did you hear me go

1 through the penalties for perjury earlier?

2 SHANDA MORGAN: Yes, ma'am.

3 ALJ HOGAN: And do you understand what perjury
4 is?

5 SHANDA MORGAN: Yes.

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

9 SHANDA MORGAN: Yes.

10 ALJ HOGAN: All right. Thank you. Go ahead.

11 **SHANDA MORGAN,**

12 being first duly sworn, testified as follows:

13 SHANDA MORGAN: I just have a couple of
14 comments. I wasn't going to speak, but I felt like I
15 just needed to state a couple of things. I live the
16 same place my husband does just north of Bismarck on the
17 east side of 83.

18 I wanted to make one comment. This pipeline is
19 running through a spring-fed creek that adjoins with our
20 property. And from what I understand in talking to
21 people that are familiar with these types of pipelines,
22 this is very concerning, because unless you can pinpoint
23 the exact point of that spring, it is -- it can very
24 well stop that spring and cause that spring to dry up.
25 And this spring-fed creek is the watering source for

1 many horses, cattle, and other wildlife in that area.
2 And so that's very concerning. And they said it's very,
3 very hard to pinpoint that. So that's one of the
4 points.

5 The other point that I wanted to make is, at the
6 very beginning of this, there was a very severe lack of
7 communication between the company and landowners, and
8 that caused a lot of strife. I myself tried to reach
9 out to who we were told was the company liaison with
10 absolutely no response. And so that in itself caused a
11 lot of grief. And so I think that is why there's so
12 many upset people, so if you want to know the truth, and
13 why there continues to be so much misinformation and so
14 many people that are still upset. And, again, I think
15 all these issues, you know, if there would have been
16 communication from the beginning, a lot of things could
17 have been worked out. But there wasn't so now here we
18 are.

19 If we could move this line further out away from
20 all this development -- I am also a realtor so I
21 understand the value of this land, especially around our
22 place just north of town here where there's all these
23 developments. And going through this creek, it would
24 just -- it doesn't make any sense why there's all this
25 jogging of this line. So if we could just move it --

1 you know, it sounds so simple -- just move it a little
2 bit, you know, draw with our pen and move it out, it
3 would just make much more sense so...

4 Anyway, that's my two cents.

5 ALJ HOGAN: All right. Thank you.

6 Mr. Bender, any questions?

7 MR. BENDER: No questions.

8 ALJ HOGAN: Mr. Pelham.

9 MR. PELHAM: No questions.

10 ALJ HOGAN: Mr. Bakke.

11 MR. BAKKE: No questions.

12 ALJ HOGAN: Mr. Leibel.

13 MR. LEIBEL: No questions.

14 ALJ HOGAN: Any questions from the
15 commissioners?

16 COMMISSIONER CHRISTMANN: Thanks, Shanda.

17 COMMISSIONER HAUGEN-HOFFART: I have a question.

18 ALJ HOGAN: Go ahead.

19 COMMISSIONER HAUGEN-HOFFART: And this is just
20 directed to you.

21 SHANDA MORGAN: Sure.

22 COMMISSIONER HAUGEN-HOFFART: The company is
23 right there. You talked about severe
24 miscommunication --

25 SHANDA MORGAN: Uh-huh.

1 COMMISSIONER HAUGEN-HOFFART: -- to move
2 forward? I've heard a lot of people talk about moving
3 forward. The company's right there. What's one thing
4 you would say to them to improve communication?

5 SHANDA MORGAN: Talk to people. Walk up to
6 their door and knock on it.

7 COMMISSIONER HAUGEN-HOFFART: Thank you.

8 ALJ HOGAN: All right. Thank you.

9 Good evening. Can you state your full name and
10 spell your last name for the record?

11 CRAIG BLETH: Yes. My name is Craig Bleth,
12 B-L-E-T-H.

13 ALJ HOGAN: Mr. Bleth, were you in the room
14 earlier when I went through the penalties for perjury?

15 CRAIG BLETH: I was.

16 ALJ HOGAN: Do you understand what perjury is?

17 CRAIG BLETH: Yes.

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

21 CRAIG BLETH: I do.

22 ALJ HOGAN: All right. Thank you. Go ahead.

23 CRAIG BLETH,
24 being first duly sworn, testified as follows:

25 CRAIG BLETH: Thank you, and Commissioners. I

1 am the vice president of project development at Minnkota
2 Power. And for those that aren't familiar with Minnkota
3 Power, we're headquartered at Grand Forks and we serve
4 eastern North Dakota and -- and northwestern Minnesota,
5 and about 150,000 customers.

6 Our primary resource at Minnkota for baseload
7 and dispatchable generation is the Young Station, which
8 is in Center, North Dakota. It's a two-unit station,
9 660 net megawatts. Very, very important to us. The
10 plants are well maintained, well run, achieve high
11 availability year after year. We made substantial
12 investments in those plants back in the 2007 to '11 time
13 frame in the air pollution controls as a result of the
14 Regional Haze regulations.

15 And, you know, shortly thereafter, in about
16 2015, the Obama Administration EPA proposed the Clean
17 Power Plan. And that caused us to begin looking at
18 carbon capture at the Young Station, because by 2022,
19 had the Clean Power Plan remained in effect, the plant
20 would have been running at 50 percent. And you can't
21 run a baseload plant at 50 percent and double your cost.
22 So -- so we started looking at Project Tundra, which is
23 carbon capture and sequestration, at the Young Station.
24 And, really, that's been my role for the last year and a
25 half or so, to lead that project.

1 So I'm here today to express Minnkota's support
2 for Summit Carbon Solutions Midwest Carbon Express
3 pipeline. In 2022, Minnkota and Summit began
4 collaborating on CO2 storage facilities to more quickly,
5 efficiently, and cost effectively advance our projects
6 to commercial operation. Minnkota has permitted a
7 hundred million ton capacity CO2 storage site near
8 Center, North Dakota. And that's the largest of just a
9 handful of such permitted sites in the United States.
10 And we're jointly developing with Summit additional CO2
11 resources nearby.

12 Collaboration is beneficial to both parties as
13 it reduces risk, accelerates the timeline for financing
14 and construction, and provides increased operational
15 flexibility when CO2 storage begins. And these benefits
16 importantly provide landowners with an enhanced
17 opportunity to maximize the value of the pore space
18 below the surface. North Dakota's blessed with ideal
19 geology for CO2 storage, and it's our view that we need
20 to promote this resource for our energy and agricultural
21 sectors to continue thriving.

22 Thank you for the opportunity to provide these
23 comments.

24 ALJ HOGAN: Thank you.

25 Mr. Bender, any questions?

1 MR. BENDER: No questions, but thank you for
2 your testimony.

3 ALJ HOGAN: Mr. Pelham, any questions?
4 Mr. Bakke, any questions?

5 MR. BAKKE: Yes.

6 Mr. Bleth, does Minnkota take any position on
7 what the appropriate route would be for the pipeline,
8 the proposed location in north Bismarck?

9 CRAIG BLETH: We do not.

10 MR. BAKKE: No other questions.

11 ALJ HOGAN: All right. Mr. Leibel, any
12 questions?

13 Any questions from the commissioners?

14 COMMISSIONER CHRISTMANN: I do.

15 ALJ HOGAN: Go ahead.

16 COMMISSIONER CHRISTMANN: So I'm looking at the
17 maps. I don't expect you to have it in front of you but
18 this -- this -- I asked questions about this earlier
19 today. And it forks off and it goes up and it looks
20 like it ends then just south of the power plant. About
21 how far would you say it is from the power plant?

22 CRAIG BLETH: How far from the power plant?

23 COMMISSIONER CHRISTMANN: The end of this
24 pipeline.

25 CRAIG BLETH: Maybe -- to the -- to the well

1 pad, we have about 150 yards, 200 yards from the power
2 plant.

3 COMMISSIONER CHRISTMANN: Okay. And that's in
4 section 4 in the northwest quarter but way on the west
5 side, very near the section line. Are you familiar with
6 how that lays out?

7 CRAIG BLETH: I'd have to look at a drawing.

8 COMMISSIONER CHRISTMANN: I'm sure the section
9 line is closed. I'm of the belief that the coal mine
10 permit is either immediately adjacent to the west of
11 there or that that might even be on the BNI permit area.
12 Are you familiar with that boundary?

13 CRAIG BLETH: I believe it's very close. I
14 believe it's outside of the disturbance area that's
15 actually being mined. So I think it's possible that it
16 does go over a short section of the mine but not in an
17 area where it's actively mined -- active mining is
18 taking place.

19 COMMISSIONER CHRISTMANN: And there's -- I mean,
20 I get the distinction between a disturbance area and the
21 permit area, but if it's on the permit area, big
22 precautions have to be used. There's certain things
23 that can be on a permit area and certain things that
24 can't, or some things that can be but with preapproval
25 from the Office of Surface Mining and our reclamation

1 department. That is something that we really are going
2 to need to know and have clarity on and -- I mean, your
3 contract --

4 CRAIG BLETH: Summit would have to --

5 COMMISSIONER CHRISTMANN: -- with BNI, I
6 would --

7 CRAIG BLETH: Summit would have to confirm, you
8 know, the routing of their pipeline.

9 COMMISSIONER CHRISTMANN: I think it's really
10 important that we clarify that. Thank you.

11 ALJ HOGAN: Commissioner Haugen-Hoffart.

12 COMMISSIONER HAUGEN-HOFFART: No, I don't, but
13 thank you for coming.

14 CRAIG BLETH: You're welcome.

15 ALJ HOGAN: All right. Thank you.

16 CRAIG BLETH: Thank you.

17 JIM ARTHAUD: Evening.

18 ALJ HOGAN: Good evening. Could you state your
19 full name and spell your last name for the record?

20 JIM ARTHAUD: Jim Arthaud, A-R-T-H-A-U-D.

21 ALJ HOGAN: Mr. Arthaud, were you in the room
22 earlier when I went through the penalties for perjury?

23 JIM ARTHAUD: Yes, I was.

24 ALJ HOGAN: And do you understand what perjury
25 is?

1 JIM ARTHAUD: Yes, I do.

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

5 JIM ARTHAUD: Yes, I do.

6 ALJ HOGAN: All right. Go ahead.

7 JIM ARTHAUD,
8 being first duly sworn, testified as follows:

9 JIM ARTHAUD: My name is Jim Arthaud. I stand
10 before you today in support of the carbon solutions
11 project.

12 I'm a lifetime resident of the great state of
13 North Dakota. I'm a former owner of a pipeline
14 construction company. I'm also a former owner of
15 various pipeline systems. I'm also a landowner with
16 many miles of oil, gas, fresh, saltwater lines on my
17 ranches. I've had great experiences with all the
18 operators on my ranches. There's probably six or seven
19 different operators.

20 I'm also past chairman of Billings County
21 commission. Billings County has many miles of pipelines
22 throughout the county which contributed greatly to their
23 financial well-being.

24 I also sit on the Clean Sustainable Energy board
25 for the State of North Dakota which I believe gives me

1 some insights to the importance of the project that you
2 guys have in front of you today, the interconnectivity
3 with what Minnkota's talking about, the oil and gas
4 sector, the ethanol business.

5 The State of North Dakota, through its proactive
6 legislative, executive, and regulatory bodies, have
7 afforded me, my family, and my thousands of present and
8 past employees a great lifestyle in North Dakota, still
9 opportunities to live here. These forward-looking
10 projects are great examples of the opportunities it has
11 allowed me and, like I said, thousands of present and
12 past employees. The various regulatory bodies,
13 including the Public Service Commission, in my humble
14 opinion, have done an excellent job of looking out for
15 the safety of the citizens of North Dakota.

16 With that said, I truly hope this project is
17 approved by the Public Service Commission. I have no
18 dog in the fight on where the pipeline goes, but I think
19 it would be a great benefit to the state of North Dakota
20 if the project is approved. Thank you.

21 ALJ HOGAN: Thank you.

22 Mr. Bender, any questions?

23 MR. BENDER: No questions. Thank you for your
24 testimony.

25 JIM ARTHAUD: You're welcome.

1 ALJ HOGAN: Mr. Pelham, any questions?

2 MR. PELHAM: No questions.

3 ALJ HOGAN: Mr. Bakke, any questions?

4 MR. BAKKE: Yes, just briefly.

5 Mr. Arthaud, you don't live in any location
6 anywhere near where this proposed pipeline is going; is
7 that correct?

8 JIM ARTHAUD: That's correct. But I own land in
9 Mercer County.

10 MR. BAKKE: Okay. And you're not taking any
11 position in regards to where this pipeline should be
12 routed in Burleigh County; is that correct?

13 JIM ARTHAUD: I am not.

14 MR. BAKKE: Okay. That's all I have.

15 ALJ HOGAN: Mr. Leibel, any questions?

16 MR. LEIBEL: No questions.

17 ALJ HOGAN: Any questions from the
18 commissioners?

19 COMMISSIONER CHRISTMANN: Thanks for being here,
20 Jim.

21 JIM ARTHAUD: You bet.

22 ALJ HOGAN: All right. Thank you.

23 JIM ARTHAUD: Thank you.

24 ALJ HOGAN: Good evening. Can I have you state
25 your full name and spell your last name for the record?

1 WILLIAM HOUSER: Yes. My name is William
2 Houser, H-O-U-S-E-R. And I am the director of
3 regulatory affairs for Continental Resources.

4 ALJ HOGAN: All right. And Mr. Houser, did you
5 hear me go through the penalties for perjury earlier?

6 WILLIAM HOUSER: I did not, but I am familiar.

7 ALJ HOGAN: You're familiar with the penalties
8 for perjury in this --

9 WILLIAM HOUSER: I watched it live so --

10 ALJ HOGAN: Okay.

11 WILLIAM HOUSER: I guess live-streamed. I guess
12 I did hear it but --

13 ALJ HOGAN: Okay. That's all I need. You
14 understand what perjury is?

15 WILLIAM HOUSER: Yes, ma'am.

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

19 WILLIAM HOUSER: Certainly do.

20 ALJ HOGAN: All right. Thank you. Go ahead.

21 WILLIAM HOUSER,
22 being first duly sworn, testified as follows:

23 WILLIAM HOUSER: We're here today in support of
24 the application in carbon Summit -- Summit Carbon
25 Solutions, sorry.

1 Continental Resources is based in Oklahoma City,
2 Oklahoma. It's the largest leaseholder and largest
3 producer in the Bakken Play of North Dakota and Montana.
4 2023, the company will celebrate 56 years of operations.
5 And during those 56 years of operation, Continental has
6 gained a great understanding of the importance of
7 developing innovative technology to become a world
8 leader. Continental has capitalized on that advanced
9 technology to remain an independent and sustainable
10 force as the world oil market evolves.

11 Continental believes it is the responsibility of
12 any energy provider regardless of the source to protect
13 the environment by limiting emissions associated with
14 its operations. Our mission strategy relies on modern
15 facility design, a keen focus of infrastructure
16 development, and implementation of best practices. This
17 focus has driven significant improvements in the
18 greenhouse gas emissions and methane intensities of our
19 operations.

20 Our commitment to reducing carbon is further
21 exemplified by our strategic investment in Summit Carbon
22 Solutions to capture and sequester estimated up to 12
23 million metric tons of CO2 per year. Since the
24 Environmental Protection Agency created Class VI wells
25 in 2010 specifically to regulate the injection of CO2

1 into deep surface rock formations, North Dakota
2 policymakers have worked hard for years to advance
3 research and develop the legal and regulatory framework
4 so the State can use its unique geological formations
5 and structures to store carbon dioxide.

6 Continental supports the building of CO2
7 infrastructure across the state because it is the right
8 thing to do. Turning back from this project now as the
9 world prioritizes low-carbon energy would be a mistake
10 for future generations who rely on North Dakota's
11 natural resources to boast incredible economic
12 opportunity. Summit Carbon Solutions is the bridge
13 North Dakota needs to fully embrace the carbon capture
14 industry.

15 Pipelines are highly regulated and the safest
16 way to transport fluids, including CO2. Along with
17 pipelines, permanent storage of CO2 has been thoroughly
18 engineered and compels extensive regulatory requirements
19 before any sequestration can occur.

20 Continental is aware that Summit has signed
21 voluntary easements for over 60 percent of the pipeline
22 route in North Dakota and 85 percent of the
23 sequestration area. Rejecting Summit's project would
24 signal that North Dakota is against carbon capture and
25 sequestration, a devastation -- a devastating decision

1 for core industries that are the backbone of the state's
2 economy.

3 Without innovative commercial development of
4 proven technologies, North Dakota's largest industries,
5 energy and agriculture, risk irrelevance as the public
6 chooses or is even forced to choose low-carbon energy
7 alternatives.

8 Continental respectfully urges the North Dakota
9 Public Service Commission to support Summit Carbon
10 Solutions and carbon capture technology. And I actually
11 did shorten that up so...

12 ALJ HOGAN: I appreciate that.

13 WILLIAM HOUSER: Thank you.

14 ALJ HOGAN: Thank you.

15 Mr. Bender, any questions?

16 MR. BENDER: No questions. Thank you for
17 testifying.

18 ALJ HOGAN: Mr. Pelham, any questions?

19 MR. PELHAM: No questions.

20 ALJ HOGAN: Mr. Bakke, any questions?

21 MR. BAKKE: Yeah, just a few, Mr. Houser. Do
22 you live in North Dakota?

23 WILLIAM HOUSER: I do not.

24 MR. BAKKE: Where do you live?

25 WILLIAM HOUSER: I live in Oklahoma City,

1 Oklahoma.

2 MR. BAKKE: Okay. And does Continental
3 Resources take any position on the route of the pipeline
4 specifically in relation to Burleigh County?

5 WILLIAM HOUSER: We are here today in support of
6 what our strategic partner is putting forward so that
7 would be our position.

8 MR. BAKKE: That doesn't really answer my
9 question. Are you saying -- is Continental Resources
10 taking a position that they think the route --

11 WILLIAM HOUSER: I think ultimately Continental
12 will trust in the process and that Summit has put forth
13 the best plan to route the pipeline.

14 MR. BAKKE: Well, what have you done to study
15 the pipeline and how it will affect north Bismarck, if
16 anything?

17 WILLIAM HOUSER: I'm sure we've had someone on
18 our team look at those scenarios. I personally have not
19 and I'm not aware of that at this time.

20 MR. BAKKE: Okay. So you're not aware of
21 Continental Resources looking at the route at all in
22 relation --

23 WILLIAM HOUSER: No, no, I didn't say that.

24 MR. BAKKE: -- in relation to Burleigh County?

25 WILLIAM HOUSER: I think Continental has

1 examined the entire route.

2 MR. BAKKE: Right. But what study have they
3 made, if any, in relation to whether this is a good
4 place to place it in north and east Bismarck, if you
5 know?

6 WILLIAM HOUSER: I do not know that.

7 MR. BAKKE: Okay. And is Continental Resources
8 an investor in the Summit pipeline?

9 WILLIAM HOUSER: Yes. I stated that clearly as
10 I opened.

11 MR. BAKKE: A major investor; is that correct?

12 WILLIAM HOUSER: I don't know that I would say
13 it's major. I mean, it's a large project. I know we
14 are a strategic partner.

15 MR. BAKKE: Do you know how much Continental
16 Resources has invested in the Summit pipeline?

17 WILLIAM HOUSER: I believe it's in excess of 200
18 million.

19 MR. BAKKE: I have no --

20 WILLIAM HOUSER: Wait a minute. In the scale of
21 the project, I know it is a large number. But I think
22 in the scale of the entire project, I don't know how --
23 how big of a piece that would be so...

24 MR. BAKKE: I don't have any further questions.

25 ALJ HOGAN: Mr. Leibel, any questions?

1 Any questions from commissioners?

2 COMMISSIONER HAUGEN-HOFFART: No.

3 ALJ HOGAN: All right.

4 COMMISSIONER HAUGEN-HOFFART: Thank you.

5 COMMISSIONER CHRISTMANN: Thank you.

6 ALJ HOGAN: Do we have anybody else that wishes
7 to provide public testimony?

8 All right. Seeing none, that will conclude the
9 public testimony portion of our hearing. I'll just go
10 around the room if there's any other housekeeping things
11 we need to address before we conclude.

12 Mr. Bender.

13 MR. BENDER: No, I don't believe so. I suspect
14 we'll be hearing from you or the Commission staff
15 attorney in terms of when we may have another hearing in
16 Bismarck.

17 ALJ HOGAN: Yes, I think that's correct.

18 Mr. Pelham.

19 MR. PELHAM: I think we just need to discuss how
20 we're going to go about -- you know, we're not closing
21 the hearing because we've got more hearings coming, but
22 we also have not heard from the intervenors today as
23 anticipated. So I'm interested in hearing from the
24 intervenors as to -- as to how to proceed and then also
25 in discussing -- the Commission's all here and we can

1 discuss how best to proceed. But I think we should at
2 least discuss that preliminarily and see how we want to
3 do that.

4 ALJ HOGAN: Okay. I guess we'll have to address
5 how we deal with the witnesses the intervenors want to
6 have testify. My plan was to just stand in recess. So
7 I guess formally we're just continuing the hearing to
8 the next hearing day. So --

9 MR. PELHAM: To the next hearing in Gwinner or
10 to a new hearing in Bismarck?

11 ALJ HOGAN: Well, I think we need to -- there's
12 been some conversations about that, and I guess the
13 Commission needs to decide how they want to handle that,
14 but I think that we're most likely going to need another
15 hearing date to address the intervenors' witnesses
16 because I don't -- that's going to be, from the sounds
17 of it, the number of witnesses they'd like to present,
18 it's going to be lengthy as well.

19 MR. PELHAM: Yeah, I'm not arguing. I'm just --
20 I think that we should try to have that discussion now
21 since we're all here.

22 ALJ HOGAN: Sure.

23 MR. PELHAM: That's my only thought on it. I'm
24 fine if we want to recess and punt on it, but since
25 we're all here, we may as well talk about it, is my

1 thought at least. But I'm fine if others disagree with
2 me.

3 ALJ HOGAN: Maybe --

4 COMMISSIONER CHRISTMANN: Well --

5 ALJ HOGAN: Commissioner Christmann.

6 COMMISSIONER CHRISTMANN: Your Honor, a lot of
7 thought went into this schedule, this four-meeting
8 schedule. And I've heard very positive comments about
9 it, that it was going to provide great opportunity, it's
10 spread out throughout the state, that sort of thing.
11 But that didn't pop into people's minds through a quick
12 meeting late in the day all of a sudden. It took some
13 forethought.

14 And even if we decided that we could come to a
15 consensus on when a follow-up meeting -- if or when a
16 follow-up meeting should be, I'm not prepared to
17 schedule it. We've got to check our schedules with
18 other people's schedules. And so I think that the three
19 commissioners and staff are going to have to get
20 together and kind of follow the same procedure where
21 staff will probably put out some feelers for dates and
22 things like that. And it's going to, I think, take more
23 than a quick meeting now at the end of the day.

24 MR. PELHAM: Yeah. And that's fine. I just
25 want to be clear, you know, for the intervenors' sake

1 too, I mean, in having discussions with counsel, not
2 with Mr. Leibel but with his cocounsel, Mr. Jorde,
3 indicating that there may be only an attempt to come to
4 the Bismarck hearing rather than other hearings.

5 So, I mean, is the thought of the intervenors to
6 come to other hearings that are already scheduled and to
7 have their presentation at those or to have a whole new
8 one, is my only thought but...

9 COMMISSIONER CHRISTMANN: That would be a good
10 point. If they're coming to another one, that might be
11 a possibility.

12 (Unidentified speakers talking simultaneously.)

13 ALJ HOGAN: Hang on, hang on. We're just
14 talking about intervenors.

15 UNIDENTIFIED SPEAKER: Yeah, I am.

16 ALJ HOGAN: Oh. Mr. Bakke.

17 MR. BAKKE: Our request -- I understand
18 obviously we can't do it today -- that the intervenors
19 on behalf of John Warford and their witnesses be allowed
20 to testify and present their testimony here in Bismarck
21 on another day.

22 ALJ HOGAN: So was -- before today was your plan
23 to only appear for the Bismarck hearing?

24 MR. BAKKE: That's my plan at present.

25 ALJ HOGAN: Okay. And, Mr. Leibel, I think you

1 have a different situation?

2 MR. LEIBEL: Well, we have some clients that are
3 here in Bismarck, you know, Morton and Oliver counties
4 that would have presented here at this hearing in
5 Bismarck, and then also we have other clients in the
6 other county areas that will present in their home
7 counties. So our position would be the same as
8 Mr. Bakke. We'd like another hearing here. And I think
9 there was enough people that left that would like to --
10 I think if we had a continued hearing, I bet we'd get a
11 lot more public people back.

12 MR. PELHAM: Well, that brings up another
13 question then, Judge Hogan, because as to public
14 comment, public testimony portion, I suppose the
15 Commission has to discuss whether or not it's, you know,
16 just for the intervenors or is the other hearing also
17 public testimony then.

18 ALJ HOGAN: I agree and I -- that's not my
19 decision. So as I think Commissioner Christmann
20 indicated, that there probably needs to be some
21 conversation before that decision is made.

22 COMMISSIONER CHRISTMANN: We'll gather together
23 relatively soon and come up with a game plan.

24 ALJ HOGAN: Sounds good. All right.

25 COMMISSIONER CHRISTMANN: But in the meantime,

1 the other three hearings are on as scheduled.

2 ALJ HOGAN: Correct. Those will not move.

3 All right. Any other matters we need to address
4 before we conclude?

5 Mr. Bakke, did you have anything?

6 MR. BAKKE: No. No, Your Honor.

7 ALJ HOGAN: And Mr. Leibel.

8 MR. LEIBEL: No, Your Honor.

9 ALJ HOGAN: All right. Then I will note just
10 for the record that it is 10:22 p.m. and we will stand
11 in recess in Commission Case PU-22-391.

12 (Adjourned.)

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Dated this date of July 9, 2025.

Lisa A. Hulm

LISA A. HULM, CET-783

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