

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

March 14, 2023 Formal Hearing

## ND PUBLIC SERVICE COMMISSION

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STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC Case No.  
Midwest Carbon Express CO2 Pipeline Project PU-22-391  
Siting Application

**TRANSCRIPT OF FORMAL HEARING**  
**March 14, 2023**

A P P E A R A N C E S

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

LAWRENCE BENDER, Fredrikson & Byron, P.A., on behalf of Applicant SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on behalf of Intervenor John H. Warford as Trustee of the John H. Warford, Jr. Revocable Trust

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

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

ZACHARY PELHAM, Special Assistant Attorney General 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

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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

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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.

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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,

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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,

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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.

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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

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1 these things. First of all, we welcome you all. One of  
2 the things that really bothered me the first sitting  
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

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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

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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.

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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

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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.

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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.

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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

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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.

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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,

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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

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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

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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

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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

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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?

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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

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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

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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.

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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,

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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?

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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

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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

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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

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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

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## ND PUBLIC SERVICE COMMISSION

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

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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

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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.

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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

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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.

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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

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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**

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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?

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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

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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

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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

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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

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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.

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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.

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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

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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.

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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.

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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

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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

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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;

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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

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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

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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

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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

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<p>1 from the north blowing to the south, directly towards 2 the city of Bismarck? 3 <b>A.</b> 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 <b>Q.</b> 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 <b>A.</b> Yeah, I don't know. I'd be speculating. 12 <b>Q.</b> 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.</p> <p style="text-align: right;">PAGE 69</p>	<p>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.</p> <p style="text-align: right;">PAGE 71</p>
<p>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 <b>A.</b> 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 Sartaria. 10 <b>Q.</b> (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 <b>Q.</b> 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 <b>A.</b> I haven't had an opportunity to read it so -- 22 <b>Q.</b> Let's just -- 23 <b>A.</b> -- you say. 24 <b>Q.</b> -- turn down to the fourth -- fifth paragraph. 25 Towards the end of that it says "no CO2 pipelines</p> <p style="text-align: right;">PAGE 70</p>	<p>1 <b>Q.</b> (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 <b>Q.</b> -- 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 <b>A.</b> I can't answer the question. I'm not familiar 14 with this incident. 15 <b>Q.</b> (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 <b>A.</b> It is. 21 <b>Q.</b> 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 <b>A.</b> Correct.</p> <p style="text-align: right;">PAGE 72</p>

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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

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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

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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

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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 Sartaria, 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

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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."

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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.

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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

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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 --

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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

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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.

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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

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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.

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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.

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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?

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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

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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?

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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.

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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.

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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

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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.

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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.

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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

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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,

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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.

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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.

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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

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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;

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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

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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

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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

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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

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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

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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

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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?

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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

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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

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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,

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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.

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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

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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

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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.

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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

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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

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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

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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

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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?

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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

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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,

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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?

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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.

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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

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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

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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

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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

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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

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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.

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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

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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

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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.

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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

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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

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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

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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.

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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

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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  
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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.  
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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?  
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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,  
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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

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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

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1 CROSS EXAMINATION  
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

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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

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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.

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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

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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.

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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

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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?

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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

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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.

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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 dispersment 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.

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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.

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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

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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?

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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.

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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.

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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,

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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.

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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

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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

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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

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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.

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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

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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

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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.

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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

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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 --

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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.

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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

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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.

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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

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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?

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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

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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

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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

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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 CO<sub>2</sub>, or whatever commodity it  
25 would be, in this case CO<sub>2</sub>, that's flowing down the

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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 dispersment 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,

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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

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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

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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

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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

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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

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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.

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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 CO<sub>2</sub>, 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

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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

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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 CO<sub>2</sub> 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

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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 CO<sub>2</sub> 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.

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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 **REXCROSS 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

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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

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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

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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?

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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 RE-CROSS 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

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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

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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

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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

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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,

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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 --

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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.

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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

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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

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1 restriction device analysis and a dispersment 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.  
24  
25

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1 RE-CROSS EXAMINATION  
2 BY MR. LEIBEL:  
3 **Q.** So I'm going to follow up, just asking about  
4 this dispersment model again. So do I understand that  
5 Summit is willing to provide that model to the  
6 Commission? Is that accurate?  
7 **A.** Well, it's how you define "model." What we're  
8 willing to do is provide the Commission with the  
9 methodology on how the model works, inputs, outputs, and  
10 the results of that model. PHMSA doesn't require -- and  
11 they're not the Commission, I understand that. PHMSA  
12 doesn't require the model but the output of the model.  
13 **Q.** Okay. So who prepared that dispersment model?  
14 **A.** Audubon Field Services prepared that model in  
15 concert with our subject matter experts within Summit.  
16 **Q.** Okay. And they were paid by Summit to do so, I  
17 assume?  
18 **A.** Correct.  
19 **Q.** Is there anyone -- any outside -- person outside  
20 Summit or Summit's agent, the contractors, that have  
21 seen that?  
22 **A.** Well, the service commission -- the Public  
23 Service Commission can see that, and then they can have  
24 their own staff or technical experts review that output,  
25 as PHMSA will.

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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 dispersment 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.

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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

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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.

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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

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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

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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

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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

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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?

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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

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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

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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

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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 --

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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

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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,

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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- --

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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

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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.

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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?

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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?

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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

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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?

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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

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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 dispersion 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.

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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

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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?

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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?

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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?

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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.

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## ND PUBLIC SERVICE COMMISSION

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

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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

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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,

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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.

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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

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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

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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

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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.

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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

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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,

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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

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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.

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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

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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

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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.

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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

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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.

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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

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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

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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,

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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?

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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

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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

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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

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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

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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

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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.

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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.

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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

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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

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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

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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

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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

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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

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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

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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?

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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.

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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

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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

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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.

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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.

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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.

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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

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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.

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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,"

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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

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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

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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.

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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

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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.

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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

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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

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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

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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

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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

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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

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<p>1 findings of the cultural surveys and the heritage</p> <p>2 surveys and what we can or cannot disclose. But I can</p> <p>3 tell you that generally, you know, I'm responsible for</p> <p>4 overseeing cultural, biological, and civil survey</p> <p>5 activities. I'm certainly not an expert when it comes</p> <p>6 to cultural or heritage survey findings or the exact</p> <p>7 quantity of findings.</p> <p>8 <b>Q.</b> So that's something we should ask the other</p> <p>9 Summit witness about?</p> <p>10 <b>A.</b> I would concur.</p> <p>11 MR. BAKKE: Okay. That's all the questions I</p> <p>12 have.</p> <p>13 ALJ HOGAN: Mr. Leibel, any questions?</p> <p>14 MR. LEIBEL: Just a few, Judge.</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. LEIBEL:</p> <p>17 <b>Q.</b> And I'm going to jump around just a little bit.</p> <p>18 You had said that once your pipeline is built, if it's</p> <p>19 built, that you will have -- provide each landowner with</p> <p>20 an as-built survey. Is that accurate?</p> <p>21 <b>A.</b> We will provide each landowner with an as-built</p> <p>22 survey upon completion of the pipeline and post</p> <p>23 construction, yes.</p> <p>24 MR. BENDER: And, Mr. Leibel, we're going to</p> <p>25 have another witness who would be better equipped to</p> <p style="text-align: right;">PAGE 301</p>	<p>1 MR. PRANIS: No questions, Your Honor.</p> <p>2 ALJ HOGAN: Commissioner Christmann.</p> <p>3 COMMISSIONER CHRISTMANN: In Oliver, Morton, and</p> <p>4 Burleigh counties, are any of those pump stations in</p> <p>5 here?</p> <p>6 THE WITNESS: Yes. I believe that there is a</p> <p>7 pump station in Burleigh County.</p> <p>8 COMMISSIONER CHRISTMANN: Can you tell me what</p> <p>9 map page number it is?</p> <p>10 THE WITNESS: Yeah. I think if you turn to page</p> <p>11 3 of the application and you look at Figure 1.1, which</p> <p>12 is the project overview map, you can see --</p> <p>13 MR. BENDER: Erik, give him a few moments to</p> <p>14 find the --</p> <p>15 THE WITNESS: Okay. Sorry.</p> <p>16 MR. BENDER: That's it, Commissioner.</p> <p>17 COMMISSIONER CHRISTMANN: Okay.</p> <p>18 THE WITNESS: So there are, you know, yellow</p> <p>19 circles that signify the locations of the pump stations.</p> <p>20 There are three what I would call main line pump</p> <p>21 stations which are signified by MPS. So there's one in</p> <p>22 McIntosh, one in Burleigh, and one in Oliver County.</p> <p>23 And then there's another trunkline pump station, as I</p> <p>24 would call it, in eastern North Dakota, in Richland</p> <p>25 County.</p> <p style="text-align: right;">PAGE 303</p>
<p>1 answer a lot of those questions if you want to wait.</p> <p>2 MR. LEIBEL: Okay. That's fine.</p> <p>3 BY MR. LEIBEL:</p> <p>4 <b>Q.</b> Have you reviewed -- there's been a lot of</p> <p>5 discussion earlier about this dispersement model that</p> <p>6 was prepared by some people for Summit. Have you</p> <p>7 reviewed that dispersement model?</p> <p>8 <b>A.</b> I am generally aware of the dispersion model.</p> <p>9 I'm certainly not inclined to speak to that or an expert</p> <p>10 in that field. I'm here to design, construct, and</p> <p>11 install the pipeline facilities. Certainly we have</p> <p>12 others that can speak, you know, more intelligently to</p> <p>13 those dispersion models. I'm certainly not that person.</p> <p>14 <b>Q.</b> Well, you have intermediate authority for</p> <p>15 routing; right?</p> <p>16 <b>A.</b> I have authority to manage the route, correct.</p> <p>17 <b>Q.</b> And so you have authority to route, but you</p> <p>18 don't know what the dispersion model says?</p> <p>19 <b>A.</b> I've read the dispersion analysis. I'm not</p> <p>20 inclined to speak to it here today. Certainly not an</p> <p>21 expert in that so...</p> <p>22 We have experts and those can be, you know,</p> <p>23 called upon.</p> <p>24 MR. LEIBEL: I don't have any more questions.</p> <p>25 ALJ HOGAN: Mr. Pranis, any questions?</p> <p style="text-align: right;">PAGE 302</p>	<p>1 COMMISSIONER CHRISTMANN: Okay. On the Burleigh</p> <p>2 County one, what page and the maps in this book?</p> <p>3 THE WITNESS: I -- I don't have that map book in</p> <p>4 front of me to cite the exact location of that pump</p> <p>5 station, but I certainly can get that information.</p> <p>6 COMMISSIONER CHRISTMANN: Okay. I'd like it for</p> <p>7 both ones in these three counties.</p> <p>8 THE WITNESS: Yes, sir.</p> <p>9 COMMISSIONER CHRISTMANN: In subsequent</p> <p>10 hearings, I want the ones in wherever we're at.</p> <p>11 MR. BENDER: Commissioner, that's something we</p> <p>12 can provide you before the end of the day. Would that</p> <p>13 be --</p> <p>14 COMMISSIONER CHRISTMANN: That would be fine.</p> <p>15 MR. BENDER: Okay.</p> <p>16 THE WITNESS: Yep, no problem.</p> <p>17 COMMISSIONER CHRISTMANN: Okay. And then in the</p> <p>18 information that you sent to us on January 17th, it's</p> <p>19 our Docket No. 28, and it was a response to my questions</p> <p>20 about where are the residences that are within 500 feet.</p> <p>21 And Mr. Powell testified that only one of them is still</p> <p>22 within 500 feet. But four of them are in Burleigh</p> <p>23 County.</p> <p>24 That map book is at the bottom of your pile, I</p> <p>25 believe. At least it looks like it from here.</p> <p style="text-align: right;">PAGE 304</p>

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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

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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

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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 unhabitable 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

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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

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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

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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

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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

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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

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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 --

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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

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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,

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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

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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.

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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.

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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                         RE CROSS 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

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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

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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?

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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

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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

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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?

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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?

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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

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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.  
24  
25

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1 MICAH RORIE.  
2 being first duly sworn, was examined and testified as  
3 follows:  
4 DIRECT EXAMINATION  
5 BY MR. BENDER:  
6 Q. Micah, by whom are you employed?  
7 A. I'm sorry?  
8 Q. By whom are you employed?  
9 A. Summit Carbon Solutions.  
10 Q. In what capacity?  
11 A. I'm the senior director of land services.  
12 Q. Would you provide for us just briefly your  
13 educational background and work experience?  
14 A. My educational background, I have a bachelor's  
15 in economics from Texas A&M University. Work experience  
16 spans about 15 years, primarily in the CapEx right of  
17 way acquisition part of the field, a various -- a broad  
18 spectrum of surface rights acquisition coupled with fee  
19 acquisition. And also have quite a bit of experience in  
20 the right of way land support for operations once a  
21 pipeline is in service.  
22 Q. Have you worked on right of way acquisition and  
23 some pipelines in North Dakota prior to Summit's?  
24 A. I have. I think the most relevant project I've  
25 worked on in North Dakota is I led and managed all of

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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.

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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

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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

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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

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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

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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

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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

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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,

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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?

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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

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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.

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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.

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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.

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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?

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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 --

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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?

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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

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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

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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

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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

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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.

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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

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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.

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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

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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

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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?

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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

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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

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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

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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

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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.

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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

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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?

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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.

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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

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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.

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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

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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

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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 --

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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?

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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

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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

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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

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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

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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

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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

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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.

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<p>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 <b>Q.</b> 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 <b>A.</b> 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 <b>Q.</b> So Missouri River, we know, is proposed to be 15 directionally bored, directionally drilled. Square 16 Butte? 17 <b>A.</b> I can't. 18 <b>Q.</b> Okay. 19 <b>A.</b> It's a lot of miles. 20 <b>Q.</b> 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 <b>A.</b> Actually --</p> <p style="text-align: right;">PAGE 385</p>	<p>1 CROSS EXAMINATION 2 BY MR. SCHOCK: 3 <b>Q.</b> Can you tell me what corridor had on-site 4 surveys completed? 5 <b>A.</b> I don't have that number in front of me, no. 6 <b>Q.</b> Would it be similar to the amount of easements 7 in place, slightly less, potentially? 8 <b>A.</b> It could be. Some people gave permission to 9 survey but didn't sign an easement so... But it should 10 be comparable, yeah. 11 <b>Q.</b> And so the actual surveys that were completed, 12 what is the survey spacing that was used for those 13 surveys? And by "spacing," what I mean is you're not 14 having one person look at a 500 or a 300-foot -- 15 <b>A.</b> Oh, I see. 16 <b>Q.</b> -- corridor by themselves. So how far apart 17 were those surveying parties spaced apart? And is it 18 similar -- because there's different types of surveys. 19 There's environmental. There's -- 20 <b>A.</b> So it depends on the resource being surveyed. 21 For cultural resources, the SHPO dictates a spacing, and 22 don't quote me, but it's on the matter of feet. So the 23 crews are like six people that cover a 300-foot-wide 24 swath. If we're doing surveys for species, it would 25 depend on whether it's a plant or an animal and it</p> <p style="text-align: right;">PAGE 387</p>
<p>1 <b>Q.</b> 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 <b>A.</b> 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 <b>Q.</b> 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. 25</p> <p style="text-align: right;">PAGE 386</p>	<p>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 <b>Q.</b> And who specifies those spacings? 9 <b>A.</b> 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 <b>Q.</b> 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 <b>A.</b> No. I mean, we started the work given the 23 route. 24 <b>Q.</b> Okay. So the only location where you considered 25 in terms of these issues you've addressed, cultural</p> <p style="text-align: right;">PAGE 388</p>

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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?

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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.** Inasmuch that we knew the Fish and Wildlife  
25 would approve the crossing if it was an HDD. So it had

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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

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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

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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 send 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

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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

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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

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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 --

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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.

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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

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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.

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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,

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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

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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

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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.

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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

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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

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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

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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."

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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

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<p>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.</p> <p>PAGE 409</p>	<p>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 PAGE 411</p>
<p>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 PAGE 410</p>	<p>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 PAGE 412</p>

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<p>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 --</p> <p style="text-align: right;">PAGE 413</p>	<p>1 <u>MITCHELL FLANAGAN,</u> 2 being first duly sworn, testified as follows: 3 MITCHELL FLANAGAN: I just handed out a future 4 land use map of Burleigh County and the location, 5 proposed location, of the hazardous liquid pipeline. On 6 this map you'll see municipal areas, agriculture zones, 7 greenway overlay, industrial zones, industrial 8 opportunities, outlined suburban, public, rural, and 9 suburban areas, community centers, neighborhood centers, 10 regional centers, and future activity centers. The 11 bright yellow is outlining suburban. The shaded gray 12 area are municipal areas. Lighter -- the light pale 13 green are agriculture zonings. 14 This map was developed in 2016. We have not got 15 a current future land use map. Hopefully, within the 16 next two years we hope to have one that -- with a new 17 comprehensive plan. 18 The reason why I'm bringing this up is that 19 there's references made to the Together 2045 plan from 20 the City of Bismarck. That plan does not overlap this 21 map. It does not overlap any areas in Burleigh County's 22 jurisdiction. So there was nobody that contacted our 23 office. We have a Burleigh County Planning Office. Not 24 anybody. The only person that did ask for our future 25 land use map was Victor Schock from your commission.</p> <p style="text-align: right;">PAGE 415</p>
<p>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. 25</p> <p style="text-align: right;">PAGE 414</p>	<p>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</p> <p style="text-align: right;">PAGE 416</p>

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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

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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?

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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?

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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 --

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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.

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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

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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

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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

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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.

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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.

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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 Jaskowskiak 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

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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

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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

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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.

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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

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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

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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 assess 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

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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

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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

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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

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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?

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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

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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?

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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 --

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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

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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

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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

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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.

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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?

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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,

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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

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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

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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

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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

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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

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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.

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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

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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?

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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

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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.

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<p>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</p> <p style="text-align: right;">PAGE 457</p>	<p>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</p> <p style="text-align: right;">PAGE 459</p>
<p>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 <u>GREG SCHONERT,</u> 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</p> <p style="text-align: right;">PAGE 458</p>	<p>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.</p> <p style="text-align: right;">PAGE 460</p>

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<p>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</p> <p style="text-align: right;">PAGE 461</p>	<p>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.</p> <p style="text-align: right;">PAGE 463</p>
<p>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</p> <p style="text-align: right;">PAGE 462</p>	<p>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 <u>MARTY BEARD.</u> 24 being first duly sworn, testified as follows: 25 MARTY BEARD: My name is Marty Beard. I'm from</p> <p style="text-align: right;">PAGE 464</p>

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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 fleeing 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

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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?

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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

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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.

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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.

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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?

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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

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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

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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?

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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

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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

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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.

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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.

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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

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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

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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

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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.

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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

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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

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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

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<p>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</p> <p>PAGE 485</p>	<p>1 ALJ HOGAN: If you're quick, very quick. 2 KANDI WHITE: Earlier, you had -- a man had 3 mentioned that he said inflation -- 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</p> <p>PAGE 487</p>
<p>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?</p> <p>PAGE 486</p>	<p>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?</p> <p>PAGE 488</p>

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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

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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

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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.

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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:

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<p>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</p> <p style="text-align: right;">PAGE 493</p>	<p>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</p> <p style="text-align: right;">PAGE 495</p>
<p>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</p> <p style="text-align: right;">PAGE 494</p>	<p>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 memorandums 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.</p> <p style="text-align: right;">PAGE 496</p>

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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

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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

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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 --

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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

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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

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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.

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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?

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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

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<p>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.</p> <p style="text-align: right;">PAGE 505</p>	<p>1 <u>TROY COONS,</u> 2 being first duly sworn, testified as follows: 3 TROY COONS: Commissioners, Judge Hogan, thank 4 you for giving me the opportunity to talk this evening. 5 I've scribbled on my notes so much all day long that I 6 don't have hardly anything left that I started with, but 7 I have some comments that I want to get out tonight. 8 I represent over 500 farm and ranch families as 9 when I wrote this a few days ago. I believe in the last 10 less than a week we've gained over 110 members mainly 11 due to this project with the concerns and level of 12 concerns out there. And so that makes a large statement 13 to me of what's going on here. 14 I'm not here to speak in opposition to this 15 project, but I am here to speak in support of landowner 16 rights. Our organization has worked for several years 17 in representing the interests of North Dakota 18 landowners. Because of that, we often have lots of 19 calls from landowners when large pipeline projects come 20 through, which we worked heavily with the Sandpiper, 21 which did not happen. We worked on the Cenex pipeline. 22 So we have a lot of experience with this. 23 We have also noticed a number of calls with 24 concerned landowners increasing in the talking of the 25 use of eminent domain. We hear that over and over and</p> <p style="text-align: right;">PAGE 507</p>
<p>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. 25</p> <p style="text-align: right;">PAGE 506</p>	<p>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</p> <p style="text-align: right;">PAGE 508</p>

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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.

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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?

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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

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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

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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

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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 --

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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.

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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

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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.

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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?

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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

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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

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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?

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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

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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.

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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?

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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.

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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

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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

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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,

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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

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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?

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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

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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

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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

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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

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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,

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

March 14, 2023 Formal Hearing

## ND PUBLIC SERVICE COMMISSION

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

March 14, 2023 Formal Hearing

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