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STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

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IN RE: :
SUMMIT CARBON SOLUTIONS, : Docket No.
LLC : HLP-2021-001
----- X



TRANSCRIPT OF HEARING

VOLUME 8

PUBLIC TRANSCRIPT

Cardiff Event Center at
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3232 First Avenue South
Fort Dodge, Iowa 50501
Wednesday, September 6, 2023

Met, pursuant to order, at 8:00 a.m.

BEFORE: THE IOWA UTILITIES BOARD

ERIK M. HELLAND, Board Chair (Presiding)
JOSHUA J. BYRNES, Board Member
SARAH MARTZ, Board Member

(Pages 1866 to 2109)

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8	(phonetic) indicates a phonetic spelling.		
	{sic} indicates the text is as stated.		
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1 P R O C E E D I N G S

2 BOARD CHAIR HELLAND: Good morning. It's
3 September 6, 2023, at 8 a.m. We are ready to get
4 started.

5 So, based on some of the comments during
6 yesterday's session, there may be a need to go into
7 confidential session today to discuss some aspects of
8 the testimony anticipated. The Board wants to take a
9 moment to explain the confidential session process.

10 If a confidential session is necessary, the
11 Board will hold the session at the end of the day.
12 And, before going into confidential session, the Board
13 will announce any necessary information about the next
14 day's session. We will then break.

15 During the break, the room will be cleared
16 of all persons who are not subject to confidentiality
17 agreements. It will be the responsibility of the
18 party who is asserting confidentiality to ensure the
19 proper people are in the room.

20 Once the Board completes the confidential
21 session, it will end for the day.

22 So, with that, Mr. Leonard --

23 MR. JORDE: Your Honor, can I ask a
24 question on that? A clarifying question? So, if
25 there are multiple witnesses throughout the day who

1 counsel think they may have confidential questions
2 for, basically save those, we bring everybody back at
3 the end.

4 Okay. Thank you very much.

5 BOARD CHAIR HELLAND: Mr. Leonard or
6 Mr. Dublinske, do you want to call your next witness?

7 MR. DUBLINSKE: I can, Your Honor, and just
8 as a sort of heads up for the Board, we are trying as
9 best we can on the short notice and with the Labor Day
10 weekend to get witnesses here more or less in the same
11 order.

12 We had somewhat anticipated that we would
13 do confidential at the end of each witness. We will
14 try and have everybody ready to keep moving smoothly,
15 but we have someone that's coming in during the day
16 today and we'll see if we get to them.

17 But our first witness today is James
18 Pirolli.

19 MR. PIROLI: Good morning.

20 BOARD CHAIR HELLAND: Thank you. Are we
21 saying the name correctly, Mr. Pirolli?

22 MR. PIROLI: Yes.

23 BOARD CHAIR HELLAND: Thank you. Please
24 raise your right hand.

25

1 JAMES PIROLI,
2 called as a witness by Summit Carbon Solutions, LLC,
3 being first duly sworn by Board Chair Helland, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DUBLINSKE:

7 Q. Mr. Pirolli, are you the same James Pirolli
8 that caused to be filed in this matter direct and
9 rebuttal testimony and a rebuttal exhibit?

10 A. Yes.

11 Q. And do you have any corrections to your
12 testimony before we begin today?

13 A. No, I don't.

14 Q. And, if I asked you the questions that are
15 in your prefiled testimony on the stand today, would
16 your answers be substantially the same?

17 A. Yes.

18 MR. DUBLINSKE: Your Honor, we move
19 admission of Pirolli's direct and rebuttal testimony
20 and Rebuttal Exhibit 1.

21 BOARD CHAIR HELLAND: Is there objection?

22 Mr. Jorde.

23 MR. JORDE: Yes, Your Honor. As to
24 rebuttal, again -- and perhaps I could have a standing
25 objection as to the concept of rebuttal testimony

1 being offered prior to the witnesses which it purports
2 to rebut have even been called. So their testimony
3 isn't yet part of the official record. Number one.

4 Then, number two, much of his rebuttal, the
5 first four pages, are not rebuttal. It's just a mere
6 restatement of what he already said in direct. So
7 it's inappropriate rebuttal.

8 And then when we get into his essentially,
9 I guess -- I don't know if he's adopting or attaching
10 this Exhibit 1, this Comparative Economics of Carbon
11 Sequestration report, this witness obviously didn't
12 prepare it, they didn't have a hand in it. They don't
13 work for the company that allegedly prepared it, or
14 even the entity that it was prepared for. It's
15 hearsay, it contains hearsay within hearsay, it lacks
16 foundation clearly, it's speculation, it's unreliable,
17 and it should be excluded in total.

18 BOARD CHAIR HELLAND: Do you have a
19 response, Mr. Dublinske?

20 MR. DUBLINSKE: I most certainly do. First
21 of all, this objection to rebuttal testimony just
22 ignores standard Board procedure that has always been
23 done.

24 We prefile both here. The rebuttal is in
25 response to prefiled testimony from the intervenors

1 and opponents. And, once that is in the Board's
2 hands, that is enough to trigger our ability to file
3 rebuttal testimony.

4 But, in any event, because there's also
5 staff reports and staff review letters and objections
6 being filed, and we have an obligation to respond to
7 those things as well, that reply would be appropriate
8 notwithstanding specific individual witnesses that
9 have filed testimony in the intervening time.

10 As for the Renewable Fuels Association
11 report, certainly there were all manner of things
12 attached to all manner of witnesses' testimony in this
13 case that they did not author that are certainly much
14 less expert and much less reliable than the
15 economist's report from the Renewable Fuels
16 Association.

17 It is within Mr. Pirolli's certainly area
18 of expertise based on his experience in the industry,
19 he is familiar with the report, he states that in his
20 rebuttal testimony. And, again, hearsay alone is not
21 a restriction under the Iowa Administrative Procedures
22 Act.

23 So this is, frankly, just perfectly
24 consistent with common practice at the Iowa Utilities
25 Board.

1 BOARD CHAIR HELLAND: Mr. Taylor.

2 MR. TAYLOR: Thank you. Sierra Club joins
3 in the objection to Exhibit 1.

4 It isn't just that it's hearsay, it's --
5 first of all, Mr. Pirolli, as Mr. Jorde said, had no
6 hand in preparation of the report, wasn't involved in
7 getting the information for the report. He is not an
8 economist, he has some experience in the industry, but
9 that's not the same as being an economist to adopt a
10 report like this.

11 And, even though there is some leniency in
12 the rules of evidence for administrative hearings,
13 there is still some requirement under Chapter 17A that
14 the exhibit must be reliable through this witness.

15 And this is a document that is not just on
16 its face direct and understandable. It's a study
17 supposedly that goes into some detailed review and
18 requires some expertise. And this witness does not
19 have that. And I think it's just really unfair and
20 improper for this witness to sponsor an exhibit like
21 this.

22 MR. JORDE: I've got a follow-up on that.
23 Mr. Dublinske said --

24 BOARD CHAIR HELLAND: I think Mr. Dublinske
25 had a response to Mr. Taylor.

1 MR. JORDE: Sorry. Go ahead.

2 BOARD CHAIR HELLAND: Go ahead,
3 Mr. Dublinske.

4 MR. DUBLINSKE: Well, I mean, I'm going to
5 want to keep responding after everyone that's arguing
6 against my objection. So if we want me to go last --

7 BOARD CHAIR HELLAND: That's fine.

8 Mr. Jorde.

9 MR. JORDE: So two key things in
10 Mr. Dublinske's response that he made that don't allow
11 this exhibit to survive objection.

12 He said that this is in response to other
13 items that were filed. Other prefiled testimony. And
14 of course they can file rebuttal, but we're here on
15 the admission of that exhibit.

16 So you file whatever you want, but it can't
17 be admitted as rebuttal without the evidence in the
18 record that it purports to rebut. Otherwise, it's
19 just two shots, two bites, at the prefiled testimony
20 apple, which is certainly not allowed.

21 As to other people that filed testimony
22 that may have attached things, knock yourself out and
23 make the objections. We're not trying to get it into
24 the record. So these are appropriate objections.

25 And, lastly, he said hearsay alone. I made

1 six objections. And they're all valid. And
2 foundation being perhaps the most valid after hearsay.

3 So clearly this witness can't be a conduit
4 for documents that lack foundation, are speculative,
5 unreliable, and are clearly hearsay. And they're free
6 to make all those same objections against any of our
7 exhibits when and if we get there. Thank you.

8 MR. DUBLINSKE: Mr. Jorde is just sorely
9 mistaken about process before the Board, and the fact
10 that he didn't bother to educate himself on how the
11 Board works is not our problem.

12 This notion that we're going to flood all
13 kinds of exhibits in and then just never put them in
14 and that means that the other side doesn't get to
15 respond, even if staff has read the testimony, even if
16 the bell can't be unrung, that has never been how it
17 works and that shouldn't be changed just for
18 Mr. Jorde's sake.

19 But there have been questions raised in
20 this case about why Summit has made certain
21 representations about the economics of the ethanol
22 industry. We've heard questions throughout the day
23 yesterday, we've heard from the landowners that
24 testified in the last two weeks about whether or not
25 this really is going to harm the ethanol industry.

1 This is a document that is the sort of
2 thing that Mr. Pirolli and Summit look to in making
3 those representations, were aware of, has supported
4 and been backing support for those representations.

5 It is perfectly reasonable, it is perfectly
6 proper, for that to come in as part of the rebuttal
7 testimony to support what Mr. Pirolli has been saying
8 under his sworn testimony, and in other places, about
9 the economics of the project.

10 And, if they want to ask him about that and
11 see what he does and doesn't know and the Board can
12 take it as they did all day yesterday with all kinds
13 of crazy things for the weight it's due, we can
14 certainly do that.

15 But there's nothing improper about that
16 being an attachment to Mr. Pirolli's rebuttal.

17 BOARD CHAIR HELLAND: Mr. Taylor.

18 MR. TAYLOR: Thank you. If Summit wanted
19 to rebut allegations that the pipeline project does
20 not support ethanol and so on, they should have
21 brought in as a rebuttal witness the author of this
22 report and not try to get it in through Mr. Pirolli.

23 We can't cross-examine the author of the
24 report if he's not here.

25 BOARD CHAIR HELLAND: Okay. Thank you all.

1 The objections are noted. The evidence will be
2 admitted and given the weight due.

3 MR. DUBLINSKE: Your Honor, we tender
4 Mr. Pirolli for cross-examination.

5 BOARD CHAIR HELLAND: Mr. Jorde, I think
6 you had your nametag up first.

7 MR. JORDE: Thank you.

8 CROSS-EXAMINATION

9 BY MR. JORDE:

10 Q. Sir, you understand that Summit has the
11 burden of proof in this case and not a single other
12 party has to call a witness and put evidence on.

13 Do you understand that?

14 A. Okay.

15 Q. Okay. All right. So there we go.

16 Now, you've offered rebuttal, but you
17 understand that the individuals -- at the time you
18 filed that rebuttal, none of those people had
19 testified.

20 Do you understand that?

21 MR. DUBLINSKE: Objection, Your Honor.
22 This is a legal process question for a fact witness.
23 Mr. Jorde is just relitigating the objection that he
24 just lost.

25 MR. JORDE: Yeah, that's true. I'm making

1 the record for it.

2 BY MR. JORDE:

3 Q. Right?

4 A. Are you asking about the report
5 specifically?

6 BOARD CHAIR HELLAND: Mr. Jorde, you've
7 made your objection. It's noted. It's in the record.
8 Let's proceed and try to stick to facts, please.

9 BY MR. JORDE:

10 Q. All right. SCSMM, LLC. That's the owner
11 of an entity called Summit Carbon Holdings, LLC; is
12 that correct?

13 A. I'm not exactly sure what the structure is
14 between those entities. I work for Summit Carbon
15 Solutions, LLC. That's what the company is that the
16 employees work for.

17 Q. So your paycheck is paid to you by an
18 entity called Summit Carbon Solutions, LLC. That's
19 the check that you get paid with?

20 A. That's correct.

21 Q. And so you don't know, as the chief
22 commercial officer and an employee and a person on the
23 management team of Summit Carbon Solutions, LLC,
24 applicant, you don't know who owns your company, the
25 company you work for?

1 A. No, I didn't say that.

2 Q. Okay. So who owns the company that you
3 work for? Isn't it true -- this doesn't need to be
4 painful. I mean, we all know the answers. I just
5 have to get them in the record.

6 But Summit Carbon Holdings, LLC, and SCS
7 MgmtCo, LLC, own Summit Carbon Solutions, LLC.

8 Correct?

9 A. So, during the deposition, Mr. Whipple put
10 forward an exhibit I hadn't seen before that was an
11 organizational structure that had names of entities on
12 there. I assume that's what you're looking at right
13 now. And we talked through that quite a bit.

14 I made it clear that I wasn't exactly
15 familiar with what the relationships of some of those
16 entities were above the level of Summit Carbon
17 Solutions, LLC.

18 If you want to ask me who the investors are
19 overall holistically in the company, we can talk about
20 that, and below Summit Carbon Solutions, LLC, I have a
21 good understanding of generally how that organization
22 is structured and what those entities do.

23 Q. Okay. I tried to get at this same
24 information yesterday with the COO. Mr. Powell. He
25 deferred to you.

1 If you can't tell me the structure above
2 Summit Carbon Solutions, LLC, and the purpose of those
3 entities, who could? And, number two, is that person
4 going to be testifying?

5 A. Well, I can tell you who -- you know,
6 generally who the large investors are. I'm not sure
7 which entity they came in through. And I think
8 yesterday my colleague referenced our interim CFO, Jon
9 Probst, and I don't believe he's going to testify.

10 Q. So then, therefore, is it true that no one
11 can tell us, to the best of your knowledge, who SCSMM,
12 LLC, is and what their role in your corporate
13 structure is?

14 A. Not specifically. I mean, at a high level,
15 my understanding is that's where the investment and
16 the equity of the primary investors comes in through.
17 Those entities.

18 Q. And then that equity would flow through
19 Summit Carbon Holdings, LLC, and somehow get down to
20 Summit Carbon Solutions, LLC; is that right?

21 A. That's my understanding.

22 Q. And then Summit Carbon Solutions, LLC, is
23 managed by SCS MgmtCo, LLC; is that right?

24 A. Well, I report to the CEO. As I said, we
25 work for Summit Carbon Solutions, LLC. The CEO of the

1 company reports to the board. You know, if you say
2 "managed by," I think our management team runs the
3 company. The CEO reports to the board of directors.

4 Q. And do you have a personal investment in
5 Summit Carbon Solutions, LLC? An equity stake?

6 A. Yes.

7 Q. And that's true for all of the members of
8 management, the C level employees and officers?

9 A. I don't know what my colleagues' equity
10 stake is in the company or if they have one.

11 Q. Who did you negotiate that with? Was that
12 Mr. Rastetter or how did that equity stake get
13 established?

14 A. It was part of, you know, when I came to
15 work for the company, my compensation and part of my
16 employment agreement.

17 Q. And I get that, but who was the person that
18 said, "And, Mr. Pirolli, this is what we're prepared
19 to offer you"? Who was doing that? Who set this up?

20 A. It was approved by -- there wasn't a CEO of
21 Summit Carbon Solutions, so it was approved by the
22 board of directors at that time.

23 Q. And the board of directors, that includes
24 Mr. Rastetter. Bruce Rastetter.

25 Correct?

1 A. It does.

2 Q. And still to this day.

3 A. It does.

4 Q. And then Summit Carbon Solutions, LLC, that
5 owns a company called Summit Carbon Project Holdco,
6 LLC; is that right?

7 A. I believe so, yes.

8 Q. And then that company has three LLCs. One
9 is SCS Carbon Removal, LLC, one is SCS Carbon
10 Transport, LLC, and then one is SCS Permanent Carbon
11 Storage, LLC; is that correct?

12 A. That's correct.

13 Q. And the way this works is that SCS Carbon
14 Removal, LLC, would own the capture equipment that's
15 connected to the ethanol plant that processes the CO2
16 and connects up to then the proposed transportation
17 pipeline; correct?

18 A. Yeah, I think that's a fair description.

19 Q. And then SCS Carbon Transport, LLC,
20 actually owns the pipe through which you propose to
21 transport the CO2 molecules.

22 A. Correct. Transport is the pipeline
23 transportation company.

24 Q. And does that company have any employees?

25 A. I don't believe so.

1 Q. And the only company -- well, let me finish
2 this out.

3 And then third, at the level below, Summit
4 Carbon Project Holdco, LLC, which is a level below
5 applicant, the third one is SCS Permanent Carbon
6 Storage, LLC. And that's the entity that manages and
7 operates and owns the permanent storage which you're
8 proposing for North Dakota; correct?

9 A. Yes.

10 Q. And the only entity with employees, of all
11 of the ones we've mentioned, is Summit Carbon
12 Solutions, LLC?

13 A. I believe that's correct.

14 Q. Now, the org chart that was utilized at
15 your deposition, do you believe that's confidential or
16 do you have any problem with that becoming uploaded
17 and an exhibit in this matter?

18 A. I'm not sure. I'd never seen that before.
19 I'm not sure where it came from, so...

20 Q. Well --

21 A. I'd have to defer --

22 Q. Do you dispute its accuracy?

23 A. I can't -- I can't tell you -- I can't
24 confirm its accuracy.

25 Q. Are you familiar with an entity called

1 SCS Holdco, LLC?

2 A. Is that the one -- is that the project
3 entity that on that paper it's below Summit Carbon
4 Solutions, LLC?

5 Q. That's what I'm trying to figure out.
6 You've got a lot of entities, and one is called Summit
7 Carbon Project Holdco, LLC, and there's another one
8 called SCS Holdco, LLC.

9 Is there a difference or might that have
10 been a name change? Do you know?

11 A. There could be a difference. I'm not --
12 I'm not sure.

13 Q. And then when we move to all of the water
14 permits that you are attempting to secure at every
15 single ethanol partner plant across the project
16 footprint, you, Summit, have separate LLCs, and it's
17 typically name of town, such as Redfield SCS Capture,
18 LLC.

19 Is that correct?

20 A. I don't know. That's -- you know, on the
21 water permitting side, that's a question for Jimmy
22 Powell.

23 Q. Well, I think he mentioned that yesterday.
24 That you're going to need permits to extract water at
25 every single location.

1 A. That part's correct.

2 Q. All right. Very good. And, just to be
3 clear, with Mr. Powell we established that it was at
4 least 20 million gallons per year, but one of the
5 permits you've recently applied for in Iowa and
6 secured was over 50 million gallons of water per year.

7 Are you aware of that?

8 A. No.

9 Q. Okay. So let me ask you a few questions
10 here.

11 So the applicant is a start-up company. It
12 hasn't commenced commercial operations.

13 Right?

14 A. We've not commenced commercial operations,
15 that's correct.

16 Q. And it has no operating history.

17 A. This company does not. Our employees
18 definitely do.

19 Q. But not within carbon dioxide pipelines;
20 correct?

21 A. No, there's definitely employees within
22 Summit Carbon Solutions that have extensive operating
23 experience in CO2 pipelines.

24 Q. Are they testifying?

25 A. I don't -- I don't believe so. I think

1 Jimmy Powell talked about it yesterday. Those are the
2 members of his team.

3 Q. So the operating company's economics are
4 driven in part by the low-carbon fuel standards,
5 regulations, and the section 45Q tax credits; is that
6 correct?

7 A. That's correct.

8 Q. And those are subject to governmental
9 change and governmental enforcement and compliance
10 standards; is that right?

11 A. Yes.

12 Q. And those are not reliable in that they
13 would continue on or that even a new administration
14 wouldn't try to rescind those tax credits.

15 Would you agree with that?

16 A. No.

17 Q. Would you agree that the 45Q tax credits
18 are governmental programs subject to legislative and
19 regulatory changes?

20 A. Yes, they have changed over time. They
21 have extended in duration and increased in value.

22 Q. And that's what got you interested; right?
23 More taxpayer giveaways in the form of 45Q tax
24 credits. Once we bumped up to \$85 a metric ton,
25 that's when Summit got real interested in getting

1 involved; is that right?

2 A. No, that's incorrect.

3 Q. When was Summit Carbon Solutions formed?

4 A. I believe that Summit Carbon Solutions,
5 LLC, was formed in 2020 or 2021, and the project was
6 under development for a period of time before that.

7 Q. When were you hired?

8 A. In June of 2021.

9 Q. Okay. So you had no idea what was
10 happening before June of 2021. Do you know the date
11 that the 45Q tax credits were increased to \$85?

12 A. It was the date of the Inflation Reduction
13 Act. Which I believe was in August of 2022. July or
14 August. I don't remember exactly the date.

15 Q. And is it true that there can be no
16 assurances that such laws that enacted the 45Q tax
17 credits and regulations as they exist today will
18 remain into the future?

19 A. Well, I mean, I guess there is a history of
20 these types of tax credits, once they're in place, not
21 being rescinded while they're underway. So, from that
22 standpoint, there's good certainty around that.

23 And, with the history of the 45Q tax
24 credit, it's been bipartisan. Several administrations
25 in a row have increased and enhanced and further

1 solidified that program.

2 So there seems to be a lot of support for
3 it.

4 Q. Okay. And so try to answer my question,
5 which is you would agree there can be no assurance --
6 you're talking about blue sky and hope. There can be
7 no assurance that such laws and regulations as they
8 exist will remain into the future.

9 That's a correct statement; right?

10 A. A hundred percent assurance? There's not a
11 hundred percent assurance that any of these programs
12 would remain in place, but there's also no history of
13 one of these types of credits ever going away either.

14 Q. Well, because there's never been a 45Q
15 credit that Summit has tried to capture, have they?
16 Until now?

17 A. Not Summit specifically, but those credits
18 have been in place for 20 years, and there are
19 companies out there that have successfully secured the
20 45Q tax credits.

21 Q. And would you agree that every time 45Q tax
22 credits are increased, that that is a negative on our
23 national debt?

24 A. No, not necessarily.

25 Q. Well, do you understand that this country

1 is run and operated based on a tax system. And we pay
2 taxes and those taxes then fund government resources,
3 programs, employees.

4 Do you understand that?

5 A. I understand that, but I also understand
6 that the program is -- these types of programs are
7 designed to incentivize investment in renewable energy
8 infrastructure and other critical types of
9 infrastructure. They're very similar to the wind and
10 solar credits that are out there.

11 And so the idea behind them is that it's
12 not a government subsidy or an up-front grant or
13 payment or loan. The idea is that it incentivizes
14 investment which is partially recouped by the investor
15 paying a lower tax rate in the future.

16 So it doesn't, you know, cost the -- create
17 a cost right now and increase the national debt today
18 if that's what your question was. That's my opinion.

19 Q. Sure. Let's talk about that. So, if
20 massive corporations and their rich investors get to
21 move the tax credits around and are paying less tax,
22 then the rest of us have to make that up to keep the
23 country moving, don't we.

24 A. I think the other side of that is that it
25 creates, it incentivizes, jobs and manufacturing on

1 the front end to -- you know, you think about the
2 large majority of these types of programs in the past
3 have been, and continue to be, focused on wind
4 projects and the companies that make wind turbine
5 blades and the construction jobs related to those and
6 the transmission lines and all of the infrastructure
7 and economic benefits of those projects.

8 So I think it creates up-front economic
9 benefits that over the long period are partially
10 offset by a lower tax base in the future.

11 Q. Okay. So is that a long way of saying that
12 if you're paying less tax than you should have been,
13 that someone else is going to have to make up that tax
14 revenue? Would you agree with that basic concept?

15 A. I agree that the investor, if they qualify
16 for that, someone is going to pay a lower tax rate in
17 the future. Whether it has to be made up by someone
18 else or not, it's not my place to pontificate on that.

19 Q. And that's not your concern. Right? We've
20 got this gold rush towards tax credits. And, if you
21 get your way, that being Summit, you'll be cashing in
22 over one and a half billion dollars of tax credits per
23 year for the life of this -- well, for the 12 years
24 that they exist, isn't that right?

25 A. I'd have to look at the math exactly, but

1 it's -- I think that number is a little high, but...

2 Q. Well, doesn't --

3 A. \$85 a ton times 10 million tons, or
4 9 1/2 million tons, is less than 1.5. I don't have a
5 calculator up here, but...

6 Q. I thought your applications and Mr. Powell
7 testified at the 18 million metric ton number. Isn't
8 that what you heard yesterday?

9 A. That's the high end of the capacity of the
10 pipeline.

11 Q. Well, does your business exist to minimize
12 profits or maximize profits?

13 A. We definitely want to optimize and maximize
14 the business.

15 Q. All right. So then simple math, 18 million
16 times \$85 a metric ton would be \$1.53 billion
17 per annum.

18 Would you agree with that?

19 A. Yes.

20 Q. And how much of that -- once that value
21 comes to you, how much of that are you giving back to
22 the farmers and landowners on an annual basis that are
23 unwillingly hosting this hazardous pipeline?

24 A. The terms of the economic share are covered
25 in the offtake agreement.

1 Q. Meaning the landowners get nothing on an
2 ongoing basis; correct?

3 A. No, that's not what I said.

4 Q. Okay. So are you proposing payments such
5 as wind on an annual basis or an equity share or a
6 royalty fee for the landowners in Iowa that are asked
7 to host this hazardous pipeline?

8 A. No, Mr. Jorde. You asked me specific
9 financial questions about our business model and the
10 offtake agreement and the terms that are covered in
11 that. And my understanding was that we're going to
12 discuss those at length in confidential session later.

13 So I'd be happy to talk about those, but I
14 don't think it's appropriate right now.

15 Q. Sure. And that's all fine. What I asked
16 you about is is Summit going to share its 45Q windfall
17 directly with a single landowner that is being asked
18 to host this hazardous pipeline on their land? Yes or
19 no.

20 A. Well, the way I look at it, yes. I mean,
21 we're paying significant easement payments to
22 landowners. And so those are, you know, the present
23 value and the amount of money that's budgeted in that
24 part of the project that we can pay for easements.

25 And so if you're -- you know, if you're

1 asking about perpetual versus up front and want to
2 debate that part, I think Micah Rorie is better to
3 discuss how those negotiations go, but the easement
4 payments reflect a significant portion of future
5 revenues but in an up-front fashion there and the
6 portion of the overall budget that we can pay for
7 easements to landowners. So that's a big part of it.

8 And I think, you know, when we look at
9 this, the core founding principles behind the project
10 are the benefits to agriculture and ethanol and to the
11 rural economies. And so we feel that landowners will
12 continue to benefit long into the future based on
13 higher values for the crops that they produce.

14 MR. JORDE: Move to strike. Unresponsive.

15 BY MR. JORDE:

16 Q. Let me just maybe try to sum up what I
17 heard there.

18 Summit is not paying landowners on an
19 annual basis; correct? Just yes or no and I'm happy
20 to move on.

21 A. No.

22 Q. Thank you. Well, so, no, Summit is not
23 paying landowners on an annual basis, or, yes, you are
24 paying them on an annual basis? Which one?

25 A. To this point, to my knowledge, if you're

1 asking about the easement payments, I'm not aware of
2 anyone that's opted for some type of an annuity. I
3 think everything has been up-front payments. But
4 Micah can talk to that.

5 Q. Is an annuity something you're offering?
6 Are you aware of that? Or should I ask Micah that
7 question?

8 A. Like ongoing -- you know, instead of taking
9 a dollar today, taking 10 cents a day for ten years, I
10 think everything has been an up-front payment to this
11 point.

12 Q. You would agree that increasing corn prices
13 could adversely affect the results of your operation
14 and profitability; correct?

15 A. No.

16 Q. Would you agree that the principal input to
17 produce ethanol at the operating company's supplier
18 plants will be corn?

19 A. Yes.

20 Q. Would you agree that the profit, if any,
21 generated by the operation of ethanol plants will be
22 largely a function of the relative price of ethanol
23 and corn?

24 A. Of those two commodities together? Yes.

25 Q. Would you agree that because ethanol

1 competes with non-corn-derived fuels, the ethanol
2 plants will generally be unable to increase the price
3 at which it sells ethanol to offset increases in its
4 corn costs?

5 A. I'm trying to figure out what you're
6 getting at there, but, generally, the base ethanol
7 price is generally tied to gasoline where corn prices
8 are not always tied to gasoline. So, in that
9 situation, it's correct.

10 But, you know, there's a situation where
11 the value of carbon and lower carbon ethanol has
12 significant value as well that's not necessarily
13 linked to the price of gasoline.

14 Q. And those are all those theoretical "maybe
15 we'll truck some ethanol to California or Canada."
16 That's what that statement is based on; right?

17 A. I don't think it's theoretical, and I'm not
18 aware of anyone that trucks ethanol from Iowa to
19 California, but...

20 Q. Isn't it going to be kind of hard to sell
21 your ethanol to California if you can't get it there?

22 A. No, I just said I'm not aware that it moves
23 by truck.

24 Q. There's no ethanol pipeline you're aware
25 of, is there?

1 A. I believe there are ethanol pipelines in
2 the United States.

3 Q. That would be a much better idea if you
4 really cared about ethanol plants. Just get the
5 ethanol and send it straight out to other markets?

6 A. A better idea than?

7 Q. Than what Summit is proposing here.

8 A. I think they're mutually -- they're
9 somewhat independent. I mean, we're talking about
10 building critical infrastructure to move CO2 to a
11 destination where it can be permanently sequestered to
12 lower the carbon intensity of ethanol. And, you know,
13 that's not an ethanol transportation pipeline.

14 Q. You would agree that the landowners adverse
15 to this project across all states don't believe it's
16 critical for any reason.

17 Would you agree with that?

18 MR. DUBLINSKE: Objection --

19 A. I can't speak on behalf of the landowners.

20 BY MR. JORDE:

21 Q. Would you agree that price pressure on
22 local corn markets can be caused by a number of
23 factors beyond the control of the ethanol plants or
24 your operating company?

25 A. Yes.

1 Q. And that can include local, national, and
2 international supply and demand to corn, it can
3 include prices for alternatives, alternative crops,
4 changes in governmental policies, damaging growing
5 conditions such as plant disease and adverse weather
6 conditions; right?

7 A. Yes.

8 Q. And would you agree that, at certain
9 levels, corn prices may make ethanol uneconomical to
10 produce at ethanol plants which, in turn, would reduce
11 the amount of carbon dioxide the operating company
12 would be able to capture and sequester.

13 A. Well, like we talked about a few minutes
14 ago, it really comes down to the relationship of corn
15 to the other commodity. So it's not just corn prices.

16 Q. Sure. And that relationship is entirely
17 out of the control of applicant; right?

18 A. No, I think, you know, over time the
19 industry has adapted and continued to evolve, like
20 many businesses and industries do, where they look for
21 opportunities in customer preference, in customer
22 demand, new innovative technologies, opportunities to
23 reduce energy intensity and cost and improve
24 efficiency to control more of their margin and make
25 that more consistent and sustainable over time. And

1 that's exactly why our ethanol plant partners have
2 signed up with us.

3 Q. Okay. So my question was can applicant,
4 meaning Summit Carbon Solutions, LLC, control the corn
5 price?

6 A. No.

7 Q. And the plants that you have, at least
8 under contract in Iowa, the 12 Mr. Powell talked
9 about, they do not guarantee any minimum quantity of
10 carbon dioxide per annum, do they?

11 MR. DUBLINSKE: Objection.

12 BOARD CHAIR HELLAND: State your objection.

13 MR. DUBLINSKE: Either way he answers that
14 it's going to implicate the offtake agreements, which
15 is where that -- if that exists is where that would be
16 spelled out.

17 MR. JORDE: Well, the latter part isn't
18 true, but I'm happy to save it for the confidential
19 session.

20 BOARD CHAIR HELLAND: Thank you.

21 BY MR. JORDE:

22 Q. If the ethanol plants experience a
23 sustained increase in the cost of corn, the operating
24 company profit margins may significantly decrease or
25 be eliminated; is that correct?

1 A. They may or they may not. But, again, it
2 depends on the margin structure and the other
3 commodities.

4 Q. Are you responsible for negotiating
5 contracts with Navigator -- or, pardon me, with
6 Summit's ethanol plants, ethanol customers?

7 A. With our plant partners, yes.

8 Q. You are.

9 A. Nothing to do with Navigator.

10 Q. No. Understood. And you've never been
11 affiliated with Navigator, have you, in any way?

12 A. No, sir.

13 Q. Do you think of them as a competitor?

14 A. Yeah, I think that's fair.

15 Q. In your role in negotiating contracts, did
16 you, Mr. Pirolli, personally go out to the 12 Iowa
17 ethanol plants and hammer out the agreements with each
18 of them?

19 A. Some of those agreements were in place
20 before I got here.

21 Q. Do you know who would have negotiated
22 those?

23 A. So those would have been done by Summit
24 Agricultural Group, which was the developer of the
25 project.

1 Q. That would be -- which Mr. Rastetter is
2 directly involved with?

3 A. Correct.

4 Q. And do you know if he personally had a hand
5 in negotiating any of those pre-existing contracts?

6 A. I don't know if he personally did or not.

7 Q. And, when we go through the contracts,
8 would we have to look at the date and where they were
9 signed to know which contracts were first or would you
10 have personal knowledge of how to figure that out?

11 A. I think we could look at dates on them.

12 Q. And then do you consider the ethanol plants
13 your customer or, as Mr. Powell and I discussed
14 yesterday, would you agree that the ethanol plants are
15 actually just giving Summit the CO2 they produce?

16 A. Well, they -- the offtake agreements are a
17 revenue share agreement for which Summit receives
18 money for multiple different services that we provide.
19 So it's a -- in general, yeah, I think there's -- you
20 know, customer components of it, there's service
21 provider components of it.

22 Q. Well, I mean, but the ethanol plants,
23 they're not hiring Summit to do anything. They're
24 giving Summit the CO2 and then Summit takes it and
25 would potentially ship it on its pipeline; is that

1 right?

2 A. No, I think what we've said publicly from a
3 high level is the way that the business model works is
4 that we build and construct the three main components
5 of the project. Which are the sequestration site in
6 North Dakota, the transportation infrastructure, and
7 the capture and compression facilities at the plant.

8 And, for that, we share, between Summit and
9 the ethanol plants, in the revenues of the tax credits
10 and the value of carbon. And the operating expenses.
11 I mean, we've said that publicly for several years.

12 So we're able to, you know, recoup all the
13 costs related to operations of those various services
14 that we provide from those revenue streams.

15 Q. Sure. And so the ethanol plants,
16 therefore, aren't hiring you to transport CO2, they're
17 giving you the CO2, and then, on the back end, there's
18 some type of revenue split assuming you get the 45Q
19 tax credits; right?

20 MR. DUBLINSKE: Objection.

21 BOARD CHAIR HELLAND: State your objection.

22 MR. DUBLINSKE: Legal conclusion. Asked
23 and answered. And Mr. Jorde continues to put his
24 characterizations that amount to his testifying into
25 his questions. And so, for all those reasons, we

1 object.

2 MR. JORDE: Well, it was never answered.

3 And this is called cross-examination. So, of course,
4 that's what I'm doing.

5 A. The --

6 BOARD CHAIR HELLAND: Why don't we ask
7 another question and move on, please.

8 BY MR. JORDE:

9 Q. Okay. Bottom line, the ethanol plants do
10 not hire Summit to do anything.

11 MR. DUBLINSKE: Same objection.

12 MR. JORDE: He's never answered the
13 question.

14 A. We're paid for services.

15 BY MR. JORDE:

16 Q. Do you claim the ethanol plants pay you to
17 do anything? A direct payment. Not via back end
18 revenue share. Direct payment.

19 A. Well, whether it's revenue share or a --
20 yeah, I think they do. Absolutely.

21 Q. You think they do because, on the back end
22 revenue share, your share is less, and you're deeming
23 that a payment. Because some of that goes to the
24 ethanol plants.

25 Is that your logic?

1 MR. DUBLINSKE: Objection, Your Honor.

2 Asked and answered several times. Just because
3 Mr. Jorde doesn't like the answer doesn't mean there
4 hasn't been one.

5 MR. JORDE: He's not answering the
6 question.

7 MR. DUBLINSKE: He's explained that the
8 revenue share is how both sides are receiving revenue
9 out of this. That is an answer. Whether Mr. Jorde
10 likes it or not is not the issue.

11 BOARD CHAIR HELLAND: Mr. Jorde, what is
12 your question?

13 MR. JORDE: Well, yeah, I'm getting kind of
14 confused myself.

15 BOARD CHAIR HELLAND: Why don't we ask your
16 question and get an answer, and then we can move on to
17 the next question.

18 MR. JORDE: That would be great.

19 BY MR. JORDE:

20 Q. Let's try this one more time, Mr. Pirolli.
21 I understand you don't want to answer this, but is it
22 true that prior to the ethanol plants giving Summit
23 the CO2 that they produce, they are not paying Summit
24 anything?

25 MR. DUBLINSKE: Objection. Calls for a

1 legal conclusion. And, again, Mr. Jorde doesn't have
2 enough leeway on cross to invent this "giving CO2" and
3 embed it in the question without any support, any
4 foundation. That's purely his mischaracterization of
5 the relationship. Mr. Pirolli has explained this
6 repeatedly.

7 MR. JORDE: Well, Mr. Powell told me
8 yesterday that the CO2 -- that the ethanol plants give
9 the CO2 and then it goes into their capture equipment.
10 We already established that.

11 MR. DUBLINSKE: A, I think that
12 mischaracterizes Mr. Powell's testimony, but we'd have
13 to have the transcript to know for sure.

14 But, second, providing or giving it in an
15 engineering context may be different than this
16 economic construct that Mr. Jorde is trying to ask
17 about today.

18 In any event, it's a legal conclusion what
19 the status of that ethanol -- or that carbon dioxide
20 is in the transaction.

21 MR. JORDE: It's a contract term that he
22 personally negotiated. It's not a legal conclusion.

23 BOARD CHAIR HELLAND: The objection is
24 noted.

25 If the witness knows the answer, you may

1 answer it, and then can we please move on.

2 A. So, generally, in a -- let's think about a
3 pipeline that transports product. A shipper provides,
4 you could say gives, whatever, tenders for
5 transportation, a quantity of volume.

6 It moves along the system, and then they
7 don't -- generally, they don't pay for those services
8 in advance. And then they pay -- at some point in the
9 future, they pay for the cost of transportation.

10 And, in our business model, CO2 is
11 delivered to Summit Carbon Solutions, we capture,
12 compress, transport, and store it. They ship their
13 ethanol to an LCFS market, they sell it at a higher
14 value because it has a lower carbon intensity score,
15 and then we invoice them and they pay us our share of
16 that. So they pay us our share plus the operating
17 expenses for doing that.

18 So, yes, they hire us to transport and
19 store it.

20 BY MR. JORDE:

21 Q. Okay. So they, meaning the ethanol plant,
22 what you just said, they pay Summit out of their share
23 of the tax credit which is for sequestering and not
24 for transportation; correct?

25 A. No. I just gave you an example of a

1 low-carbon fuel standard market, not a tax credit.

2 Q. Well, no one was asking you about those
3 markets. And so you would agree with me that the tax
4 credits, the 45Q tax credits, has nothing to do with
5 transportation. Those are derived and earned only for
6 the sequestration, not transportation. You understand
7 that.

8 A. So my understanding of the 45Q tax credit
9 is that it -- the 45Q tax credit is captured by the
10 owner of the capture equipment in a CCS operation.

11 Q. Which is Summit in your business model.

12 A. With the ethanol plants, that's correct.

13 Q. And Summit is also the shipper. Because
14 Summit takes title at the title transfer point, as
15 established with Mr. Powell yesterday, which is that
16 point immediately before CO2 molecules enter your
17 proposed pipeline; correct?

18 MR. DUBLINSKE: Objection. That is covered
19 in the offtake agreements and needs to be in
20 confidential session.

21 BOARD CHAIR HELLAND: Thank you.

22 MR. JORDE: I mean, we talked about it all
23 day yesterday with Mr. Powell. So it's established
24 that that's a fact.

25 MR. DUBLINSKE: Mr. Powell admitted that he

1 had not reviewed and wasn't familiar with those
2 offtake agreements. He was talking about a general
3 conceptual model. This is the witness to discuss the
4 offtake agreements, and the question is related to the
5 offtake agreements.

6 BOARD CHAIR HELLAND: Okay. We can discuss
7 this in confidential session.

8 MR. JORDE: Well, I'm trying to figure out
9 which questions we can keep going on here. Let's see.

10 BY MR. JORDE:

11 Q. Did Summit ever hold what's called an open
12 season or, specifically, a public open season?

13 A. Not officially yet. I mean, we've been
14 soliciting business and holding ourselves out there
15 for the last three years. I've been active -- or
16 longer. I'm not sure exactly when they started
17 contacting ethanol plants.

18 But, since I arrived in June of 2021, I've
19 been continually soliciting business, soliciting
20 additional volume from ethanol as well as a number of
21 other industries. So any industrial emitter or
22 potential project that produces volume that would be
23 interested in any of our services, including
24 transportation on the pipeline, we've been working on
25 that.

1 Q. So do you think the existence of a website
2 and you, Mr. Pirolli, or others that work with or for
3 you, going out saying, "Hey, we're here," is that
4 equivalent to a public open season in your
5 understanding?

6 A. No, we're going to host a -- my
7 understanding is we're going to host a more formal
8 open season in the near future.

9 Q. And what is your understanding of the
10 purpose of an open season?

11 A. I believe there's additional formalities
12 and announcements around it and the importance of
13 making sure that any qualifying potential shipper has
14 the opportunity to bid for firm capacity on the
15 pipeline.

16 Q. And what information -- has Summit
17 assembled its information in documents that it would
18 present to any potential emitter that would be induced
19 to participate via the open season process?

20 A. I believe we have some of it completed. I
21 haven't seen the final documents.

22 Q. Are those documents publicly available
23 anywhere? Are they on your website?

24 A. No. My understanding is that they would be
25 made available to any qualifying potential shippers

1 occurring during the open season.

2 Q. And qualifying potential shipper. Could I
3 start Brian Jorde CO2, LLC, and contract with you to
4 put one barrel of CO2 onto your proposed pipeline?

5 A. I think there's a number of criteria that
6 are required. Volume, meaning the quality spec
7 obviously on a pipeline, ability to get that product
8 onto the pipeline, as well as demonstrated ability to
9 do something with it at a destination.

10 Q. Okay. So, obviously then, there will be
11 some criteria that fits whatever Summit has set up as
12 reasonable for the potential emitters or potential
13 customers that it wants to deal with.

14 Is that fair?

15 A. Yes.

16 Q. Has Summit prepared a pro forma
17 transportation services agreement as part of any of
18 your open season preparation?

19 A. Yes.

20 Q. Is that something that you can make
21 available in these proceedings?

22 A. I believe you've seen a -- there's a draft
23 of an agreement that has been made available in a
24 redacted form, because it's also one that's currently
25 under negotiation with a shipper.

1 Q. And I agree. And that was included in your
2 deposition. That would be something for confidential
3 session, but it's that agreement is what you're
4 referencing? Transportation services?

5 A. That's -- that is the -- is also the form.
6 You know, the general form agreement.

7 Q. In the open season process, would a
8 potential emitter be required or obligated to build
9 their own carbon capture equipment or is that
10 something Summit would take care of? How does that
11 work?

12 A. It could be either one. It depends on the
13 industry. Generally, the business model with ethanol
14 is that we would build it, but other industries --
15 generally, the industry, or the shipper, is -- in
16 general, they contemplate building their own.

17 Q. And the approximate cost of building the
18 carbon capture facility at, say, an ethanol plant, how
19 many millions roughly?

20 A. It can range depending on the size of it.
21 And the size of the plant. I'm not sure if Mr. Powell
22 shared numbers on that yesterday, but there's a pretty
23 wide range.

24 Q. Well, just help me out. I mean, you're
25 building them. Meaning Summit. So your estimates for

1 budgeting purposes on the low end of an Iowa facility
2 to the high end, what's the range?

3 A. I don't know if I've seen the exact
4 numbers, but order of magnitude, from the low end to
5 the high end, anywhere from fifteen to sixty million
6 dollars, I would say, catches most of it.

7 Q. And, during the open season period, would
8 those contracts require a customer to enter into
9 exclusive carbon dioxide supply agreements with you or
10 how would that work?

11 A. Well, my understanding of an open season is
12 to allow shippers to contract for a committed
13 capacity. So, if a shipper participates in the open
14 season and is successful, they would enter into what's
15 known as a take-or-pay agreement for a committed
16 capacity.

17 There's also uncommitted shippers which
18 would not participate in the open season. Which --
19 you know, if Brian Jorde Carbon, LLC, wants to ship
20 one barrel, and you could get it on the pipeline with
21 an uncommitted contract in the future, that would
22 probably be your better option there.

23 Q. And so, then again, would a volume
24 commitment be one of the criteria you'd be looking at?
25 Or like a minimum number of tons or however you

1 calculate that?

2 A. Generally, that would be part of the
3 committed shipper contract.

4 Q. And what about for a period of time for
5 these open season contracts we're discussing. Would
6 there be a commitment -- like a minimum commitment. I
7 mean, you couldn't do it for one day, could you?

8 A. No, not one day. There would be a -- yes,
9 there would be a minimum commitment.

10 Q. Has Summit established any tariff rates?
11 Or what's your nomenclature. I'm sure you're familiar
12 with the concept of tariffs on pipelines.

13 A. We have established tariff rates that we
14 are contemplating. We have not released those
15 publicly.

16 Q. Well, whenever you establish a tariff rate,
17 would that be the same for all future customers
18 whether obtained via an open season or a committed
19 contract?

20 A. With -- within classes of shippers that are
21 substantially the same, so if you think about terms
22 such as similar volumes, similar duration, we don't --
23 my understanding is that discrimination on key terms
24 within classes of shippers is not allowed. If there's
25 a class of shippers that are substantially similar,

1 their tariff rates are going to be the same.

2 Q. But right now, with your existing 12, there
3 aren't tariff rates established for those 12, are
4 there?

5 A. Well, so the offtake agreement contemplates
6 part of that. And then internally as well we'll have
7 committed shipper contracts between the entities that
8 you brought up earlier. At least that's how we're
9 approaching it.

10 Q. And the tariffs, those are calculated
11 relevant -- or they're somehow related to or are
12 contingent on the amount of the 45Q tax dollars that
13 could be received; correct?

14 A. That could play into it, but, you know,
15 when you look at a tariff on a pipeline or a rail, or
16 any type of transportation like that, I think it's
17 more related to what the -- you know, the returns, the
18 market price. I think there's more components to it
19 than that.

20 MR. JORDE: All right. You gave a
21 deposition in this matter, but the offtake agreements
22 which were discussed at your deposition were redacted.
23 And I believe they were redacted more than what we now
24 have.

25 I'd like to offer your deposition with all

1 attachments -- I guess it would be confidential, but
2 it's kind of a part question, part offer for
3 Mr. Dublinske as well as the Board. I want to make
4 that offer understanding that we don't have them yet
5 to upload due to their confidential nature.

6 And so I guess it's kind of a plea for
7 help. I don't know how exactly you want us to do that
8 or if I should redo that in the confidential session
9 or what's the best procedure. Or if Mr. Dublinske
10 would agree that we will be able to upload those
11 confidentially and then make them part of the record.

12 MR. DUBLINSKE: So, Your Honor, I agree
13 with Mr. Jorde on what the status of those are. We
14 provided the less redacted versions in the data room
15 subject to the ALJ's order. And so those should be
16 available to be uploaded. They do need to be uploaded
17 confidentially.

18 I don't particularly care if Mr. Jorde
19 wants to offer those now. I think in some ways it may
20 be cleaner, because any questioning on those would
21 have to be in confidential session, to just offer
22 those at the onset of the confidential session.

23 But, from our perspective, those are
24 available for that purpose, and we have no objection
25 to those being uploaded confidentially into the record

1 of the hearing.

2 BOARD CHAIR HELLAND: Okay.

3 MR. DUBLINSKE: Actually, let me further
4 clarify that. Mr. Leonard reminded me that the terms
5 of the protection is that the data room settings do
6 not allow -- I mean, Mr. Jorde and the other parties
7 can access those but cannot download those. And,
8 because they can't download them, they can't upload
9 them.

10 So, at a break, we will work on a solution
11 for that, and we'll work with Mr. Jorde and make sure
12 that those are capable of -- well, I should actually
13 check. Because we're going to have to work around the
14 ruling, which allows those to be very limited to
15 prevent inadvertent disclosure.

16 Let us discuss that at a break and we'll
17 get back to you and try and come up with a solution.

18 BOARD CHAIR HELLAND: I think we have a
19 kind of a movement and a kind of a non-objection, but
20 we will admit them one way or the other once we figure
21 out how to work through all these hoops. So
22 appreciate that.

23 MR. JORDE: That works for me. Thank you.

24 BY MR. JORDE:

25 Q. In your testimony, sir, you talk about some

1 experience with three of the Anderson ethanol plants
2 and that they had CO2 capture facilities. The
3 Anderson ethanol plants, were those connected to any
4 transportation pipeline going to a permanent
5 sequestration facility or was that capture facility
6 something different?

7 A. Those were capture facilities owned by a
8 third party that produced industrial CO2 products.

9 Q. And you're familiar with CapCO2 and the
10 technology that allows for carbon capture right
11 on-site without the need of a pipeline; is that
12 correct?

13 A. No. CapCO2. I'm not sure exactly what
14 that is.

15 Q. You're not familiar with one of your
16 primary competitors that can do what you want to do
17 and just disposes of the pipeline aspect? You're not
18 aware of that?

19 A. I'm not sure exactly what CapCO2 is.

20 Q. But, as the chief commercial officer, you
21 certainly make it your job to be up to speed on any
22 types of other technologies or competitors that might
23 dent your potential profits in the future; is that
24 fair?

25 A. Or create opportunities for us. I'm

1 absolutely aware -- we've had hundreds of
2 conversations with all types of different potential
3 use cases in the future. Everything from using
4 ethanol in other low-carbon products to using CO2.

5 But the focus of our project is carbon
6 capture and permanently storing it. If you tell me
7 what that company or their technology is proposing to
8 do, I can tell you if I'm aware of that in general,
9 but I'm not familiar with that company.

10 Q. And the permanent sequestration and
11 permanent storage, that is underpinning your claims,
12 Summit's claims, of the environmental benefits that
13 you talk about in your direct and rebuttal testimony;
14 correct?

15 A. Right. Insofar as -- corn plants remove
16 carbon from the atmosphere. Some of that flows along
17 with the corn kernel, and that as yeast consumes
18 starch during the fermentation process, they emit
19 equal parts of alcohol and CO2. That CO2 is captured,
20 compressed, transported, and permanently stored
21 underground.

22 So, from that standpoint, it reduces the
23 emissions profile from ethanol production and improves
24 the life cycle analysis and the carbon intensity of
25 the underlying fuel.

1 Q. Do you work with, at Summit, a Summit
2 employee named Jeff Skarre, S-k-a-r-r-e?

3 A. Yes.

4 Q. And are you familiar what Jeff Skarre told
5 Oliver County in North Dakota last week related to
6 your attempts to get injection wells?

7 A. No, I'm not exactly sure what Jeff told
8 someone last week.

9 Q. Would you be surprised to learn that he
10 said, in response to the enhanced oil recovery
11 question, that today it's intended for permanent
12 storage, long term. There are a variety of uses.
13 Enhanced oil recovery, that may be an option in the
14 future.

15 Are you aware that's what he, on behalf of
16 Summit, told Oliver County last week?

17 A. I'm not aware of that.

18 Q. And certainly if that's true, which I'm
19 going to load that up here eventually as an exhibit,
20 then that would completely contradict any claimed
21 environmental benefits that Summit is trying to induce
22 this Board to accept as a reason to permit this
23 project; right?

24 A. No.

25 Q. In your direct testimony, it looks like you

1 kind of essentially copy what Mr. Powell says of the
2 reasons of why you think this project is desirable.
3 And then you go on to talk about including on-ramps
4 onto the system at 12 ethanol plants.

5 When you say "on-ramps," is that simply the
6 connection of the carbon capture equipment where it
7 attaches to the pipeline or what do you mean by
8 quote-unquote on-ramps?

9 A. Yeah, I'd say that. Any point where CO2
10 could be injected into the pipeline system.

11 Q. On page 4 of your testimony, you talk about
12 that you believe what you're trying to do here is
13 important, and that, more importantly, for the
14 families and communities that are relying on the jobs
15 you're trying to protect.

16 Is that something you really believe? That
17 that's what Summit is doing? It's protecting jobs?

18 A. Yeah, I think that's what this project is
19 fundamentally about. Protecting rural economies,
20 providing opportunities for agriculture and renewable
21 fuels. You know, this is the history of agriculture
22 is innovation and doing more with less and continuing
23 to move forward and stay at the forefront.

24 Q. You're aware that jobs in Iowa have been
25 around for quite some time, but it was the 45Q tax

1 credits that actually jump-started this project, not
2 your concern for existing jobs; correct?

3 A. I think -- you know, when we talk about and
4 look at the impact that the renewable fuel industry,
5 and ethanol in particular, have had in Iowa on farm
6 incomes, the number of direct jobs and indirect jobs
7 affiliated with those production facilities, I think
8 there's 42 plants in Iowa, and the rural communities
9 and all the indirect jobs associated with those,
10 that's critical.

11 And, between the increased value for corn,
12 the additional revenues and GDP from domestic
13 processing, it's critical that we protect those and
14 continue to provide opportunities for these types of
15 products and renewable fuels to remain competitive and
16 even increase their competitiveness in domestic and
17 global markets long term and protect what's there.

18 And so the 45Q tax credit, and other
19 programs, are aligning with global shifts in consumer
20 demand and a push towards a low-carbon economy.

21 Q. Okay. And would you agree that if farmers
22 simply went to no till practices, that that would far
23 outpace any alleged reduction in carbon than your
24 proposed project would? Are you aware of that?

25 A. I don't think that's exactly true. I'm

1 absolutely supportive of no till farming and
2 conservation practices like that. We practice no till
3 farming on our farm in northwest Iowa, and have for a
4 long time, and I would love to continue to see more
5 practices like that where applicable.

6 But, if you look at no till specifically,
7 and a host of other practices involved with that, the
8 opportunity to increase soil organic carbon content is
9 less than one ton per acre per year. Which is less
10 than what we capture and permanently store off an acre
11 of corn that's produced through this process.

12 So I think it's an all-of-the-above
13 approach.

14 Q. All right. Well, a bulk of my questions
15 will be for confidential, so I just have a couple more
16 left here.

17 On page 7 of your testimony, direct
18 testimony, you state -- this is a quote from you.
19 James Pirolli.

20 Quote, I do know that safety is Summit's
21 number one priority and all other business aspects
22 follow behind this topic, end quote.

23 Now, sir, if that was true, obviously you
24 would have already provided your dispersion modeling,
25 your risk analysis, your draft emergency response

1 plan, you would have engaged local responders,
2 communities, counties, people if that statement was
3 true; correct?

4 A. I think that was debated for a long time
5 yesterday with Jimmy Powell, and I believe -- you
6 know, since I've joined Summit, and what I've learned
7 about the process and our commitments and what
8 Mr. Powell and the team he's assembled are capable of
9 and our overall priorities and focus on safety, it's
10 without a doubt that it's a top priority. It's the
11 number one priority for us. And so the rest of, you
12 know, what we'll provide and when, I think, was
13 discussed at length.

14 Q. And when you say it's "the number one
15 priority," you mean it's a number one priority to
16 conceal how unsafe your pipelines are and that's why
17 you haven't shared that information; correct?

18 MR. DUBLINSKE: Objection, Your Honor.

19 BOARD CHAIR HELLAND: State the objection.

20 MR. DUBLINSKE: It's just badgering and
21 argumentative, and Mr. Jorde is putting unsupported
22 unsupportable, personal opinions and trying to call it
23 a question.

24 MR. JORDE: Yeah, that's probably true.

25 BOARD CHAIR HELLAND: Fair enough. Go

1 ahead and move on, Mr. Jorde.

2 MR. JORDE: Other than unsupportable. But
3 we'll get to that.

4 BY MR. JORDE:

5 Q. Moving on, the ethanol partners and Summit
6 share the revenues and operating cost. That's what
7 you state in your publicly available direct testimony.

8 Is it your testimony here that to get into
9 any further details, you believe that has to be done
10 in confidential session?

11 A. Yes.

12 Q. On the revenue sharing?

13 A. Yeah.

14 Q. Then last thing. And I'm going to reserve
15 for the confidential session everything else.

16 In your rebuttal, you talk about insurance
17 in response to some of my folks', landowners, concern
18 about ability to obtain insurance. And your response
19 is, well, your family has never had an ability to
20 obtain information.

21 My question, sir, is has your family ever
22 had a claim related to carbon dioxide damage that you
23 had to file against your insurance policy?

24 A. No.

25 MR. JORDE: Then, Your Honor, I will

1 respectfully reserve all of my other questions for the
2 confidential session and pass the witness.

3 BOARD CHAIR HELLAND: Thank you.

4 I believe Mr. Long with OCA is next.

5 MR. LONG: Thank you. I'll be fairly
6 brief.

7 I believe Board staff has two Summit
8 responses to OCA data requests available and I'd like
9 to introduce those to the witness. I also provided
10 them electronically.

11 Mr. Pirolli, while they're being
12 distributed, I'll just explain. It's your responses
13 to OCA Data Requests 72 and 73.

14 And, for Mr. Dublinske, I intend to ask
15 about the tax credits and the low-carbon fuel markets
16 generally. I don't expect to touch on anything that
17 would be confidential.

18 THE WITNESS: Okay.

19 BOARD CHAIR HELLAND: Sorry. Mr. Long,
20 were you moving to admit these now? I hadn't heard.

21 MR. LONG: Does the witness have them yet?

22 BOARD CHAIR HELLAND: No. I was just
23 clarifying.

24 MR. LONG: I will. I just want to lay
25 foundation with the witness first.

1 CROSS-EXAMINATION

2 BY MR. LONG:

3 Q. Mr. Pirolli, do you have Data Responses 72
4 and 73?

5 A. Yes.

6 Q. We'll just try to lay foundation for both
7 of them at the same time.

8 Did you author the responses to these data
9 requests?

10 A. Yes.

11 Q. Thank you.

12 MR. LONG: With that, Board Chair, I'd like
13 to move admission of them. I believe I have them
14 marked as OCA Hearing Exhibit 2 for Data Request
15 No. 72 and OCA Hearing Exhibit 3 for Data Request 73.

16 BOARD CHAIR HELLAND: Thank you.

17 Are there objections?

18 MR. DUBLINSKE: No, Your Honor.

19 BOARD CHAIR HELLAND: The Board will admit
20 the evidence as OCA Hearing Exhibit 2.

21 MR. LONG: And --

22 BOARD CHAIR HELLAND: And 3.

23 MR. LONG: Thank you.

24 BY MR. LONG:

25 Q. Mr. Pirolli, looking at OCA Hearing

1 Exhibit 2, which is your response to Data Request 72,
2 in this you tell us that -- I'm going to ask about the
3 45Z tax credit. That the 45Z tax credit applies to
4 fuel produced after December 31, 2024, and sold before
5 December 31, 2027.

6 Do you see that?

7 A. Correct. Yes.

8 Q. I think I know the answer. I just want to
9 clarify this for the record. So does that mean that
10 the 45Z tax credit is only available for those three
11 years? That three-year period?

12 A. That's correct. Right now the 45Z is
13 proposed for those three years. '25, '26, and '27.

14 Q. Thank you. And I'd also like to ask about
15 another tax credit that isn't mentioned here, but you
16 did mention it in your direct testimony at page --
17 pardon me for a moment. I believe pages 8 and 9.
18 It's the 40B tax credits for sustainable aviation
19 fuel.

20 Do you recall mentioning that in your
21 testimony?

22 A. Yes. I'd like to see it up here related to
23 your question.

24 Q. I would just like to ask you if there's any
25 updates on Summit's exploration of the aviation fuel

1 and if you are pursuing the 40B sustainable aviation
2 fuel tax credits?

3 A. So Summit Carbon Solutions is separate from
4 the entity that you may have seen in a press release,
5 which was Nex Gen Fuels. Which is a company that's
6 being proposed by Summit Agricultural Group and the
7 founder and investor in our company. That's a
8 separate company that is considering a sustainable
9 aviation fuel alcohol-to-jet facility. That's what I
10 know about that entity.

11 Summit Carbon Solutions is not ourselves
12 pursuing the SAF credit, but we're definitely
13 supportive of any of our partner plants that would
14 make an investment and create an alcohol-to-jet
15 process.

16 Q. Understood that the fuel production itself
17 would be a separate entity, but I guess my question is
18 would the sustainable aviation fuel activities by this
19 Summit affiliate, would it impact or relate to the
20 project we're discussing today, the carbon dioxide
21 pipeline?

22 A. I believe, at a high level, it could in
23 that that would be an alcohol-to-jet process. Just
24 like there's several others that are being discussed
25 and proposed. And, in general, an alcohol-to-jet

1 facility like that creates considerable demand for low
2 CI ethanol. In order to achieve the 45Z or the 45B
3 SAF credit, one of those requirements is the carbon
4 intensity of the finished fuel. And the only way to
5 reach that using alcohol as a feed stock is to do
6 carbon capture and storage to get the carbon intensity
7 of the feed stock low enough for the ending fuel to
8 qualify. So that would be a connection.

9 Q. Thank you for that clarification. Next I
10 would like to turn to what I offer as OCA Hearing
11 Exhibit 3, which is Data Request 73.

12 There in the body of your response you list
13 some vehicle fuel -- or some gasoline-powered vehicle
14 fleet numbers and expected numbers. And I'd like to
15 clarify.

16 That's not North America, that's global.
17 Is that correct?

18 A. That's the global fleet. Those are the
19 global fleet numbers. And I cited the report where
20 that came from. And I believe that report also had
21 some North American numbers in it.

22 Q. Do you have, or have you seen, any numbers
23 like this specifically for the low-carbon fuel states?
24 Or I guess it includes some Canadian provinces.

25 A. Yeah, there's some ranges, and California

1 has produced those as well, and they look at what the
2 impact will be. If they were to stop selling internal
3 combustion vehicles in 2035, how many would still be
4 on the road in 2040 and 2050.

5 And the liquid fuel demand out there for
6 gasoline and ethanol and diesel, I mean, it's still
7 substantial out there in 2040 and 2050. Because those
8 are light-duty vehicles only.

9 MR. LONG: Thank you. I don't have any
10 other questions.

11 THE WITNESS: Thank you.

12 BOARD CHAIR HELLAND: Thank you.

13 Mr. Whipple.

14 MR. WHIPPLE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WHIPPLE:

17 Q. Mr. Pirolli, we've met. I'm Mr. Whipple.
18 I represent seven counties.

19 MR. WHIPPLE: Your Honor, I'd like to first
20 make sure -- because I'm not sure I heard Mr. Jorde
21 offer his deposition for the record. And, if that
22 wasn't done, I just want to make sure that that's in
23 the record.

24 BOARD CHAIR HELLAND: I think we did, but
25 if you'd like to admit it again, we can be redundant.

1 MR. WHIPPLE: Yes, I'd like to admit it
2 again.

3 MR. DUBLINSKE: Your Honor, my
4 understanding, and I have no objection to admitting it
5 again, was that we admitted all of the deposition
6 materials collectively yesterday.

7 MR. WHIPPLE: I thought we were going
8 witness by witness. But I'm happy to do all of them.

9 BOARD CHAIR HELLAND: There's no objection
10 to admitting it again. It's already a voluminous
11 record, so --

12 MR. WHIPPLE: So what's a little more;
13 right?

14 BOARD CHAIR HELLAND: I think there's
15 plenty of redundancy.

16 BY MR. WHIPPLE:

17 Q. So, Mr. Pirolli, I'd like to start with
18 your Rebuttal Exhibit 1.

19 MR. WHIPPLE: And, Your Honor, if we could
20 put that up on the screen, it might be helpful to the
21 witness.

22 BY MR. WHIPPLE:

23 Q. Mr. Pirolli, did you create this exhibit?

24 A. No.

25 Q. Do you know when it was created?

1 A. I believe it was published in February of
2 2023.

3 Q. Do you recall when you filed your direct
4 testimony?

5 A. I believe that was in -- I believe it was
6 in May, but I'm not really sure.

7 Q. I think that's right. In May. So why
8 didn't you sponsor this in your direct testimony?

9 A. I'm not really -- I'm not really sure. I
10 think we just looked at a different set of, you know,
11 what the focus of the direct testimony was at that
12 time.

13 Q. Okay. Thank you. Do you know who prepared
14 this exhibit?

15 A. I believe the authors are listed on there.
16 It was solicited by the Iowa Renewable Fuels
17 Association.

18 Q. But specifically which person or people by
19 name? Do you know?

20 A. I know the company that's listed up there,
21 that's shown.

22 Q. So you wouldn't know the qualifications of
23 the people that prepared it.

24 A. I do not.

25 Q. Do you know whether Summit had control over

1 the preparation of the exhibit?

2 A. We did not have control over the
3 preparation.

4 Q. So you didn't dictate its assumptions?

5 A. No, it was independent.

6 Q. And you didn't collect the data.

7 A. No.

8 Q. Do you know where the data was collected
9 from?

10 A. I believe some of it is cited in there.

11 Q. Did Summit pay to have this prepared?

12 A. No.

13 Q. What would you say, in your own words and
14 understanding, is the scope of this exhibit?

15 A. Well, I think, at a high level, it does a
16 nice job of laying out in simple terms at a high level
17 the impact that the renewable fuel industry has had on
18 the state of Iowa from an economic standpoint and
19 specifically on the agricultural and farm level.

20 There's some of the tables in there that
21 show -- you know, there's two and a half billion
22 bushels of corn produced in the state every year.
23 Over 60 percent of that goes to ethanol. There's
24 roughly four and a half billion gallons of ethanol
25 produced in the state and what the economic impact is

1 of that with the addition of adding value through
2 processing here in the state.

3 I think those are some of the key takeaways
4 that are understandable, indisputable facts. I think
5 it -- you know, it gets a lot deeper into some other
6 areas, but those are some of my key takeaways. The
7 number of jobs that are supported by agriculture and
8 by ethanol and renewable fuels in general. Those are
9 some of the key concepts.

10 Q. Would you say this is a forward-looking
11 report or a historical report?

12 A. I think it's both, but it does -- there's a
13 lot of historical facts in there as well and getting
14 to some pretty solid conclusions on the amount of
15 additional GDP that having renewable fuel industries
16 in the state of Iowa have added over time.

17 Q. Doesn't it attempt to project the future
18 impacts of sequestration?

19 A. Yes, there's some components of that.

20 Q. So that wouldn't be a fact, would it.

21 A. No, I think those are projections.

22 Q. Right. Generally speaking, they're
23 projections. So speculations really; right?

24 A. Yes.

25 Q. Was this exhibit prepared specifically for

1 this proceeding?

2 A. Not that I'm aware of.

3 Q. What was its purpose when it was originally
4 prepared?

5 A. Well, I think to, you know, lay out the
6 fundamentals of the impact of renewables on the state.
7 And, like I said, it's an independent report, but I
8 think part of it also goes to show -- you know, as you
9 said, there's definitely a component of forecasting of
10 what would be a range of future economic impacts and
11 impacts on these renewable fuel industries if we do
12 CCS and what is that range.

13 But part of it also that goes back to my
14 earlier comments on reviewing history and what the
15 facts are on how much renewables and ethanol do you
16 add to the state economy.

17 If we don't do this project, if we don't
18 build the critical infrastructure necessary to capture
19 and transport carbon to areas where it can permanently
20 be stored, that the renewable fuels industry in this
21 state and agriculture will be under severe pressure in
22 the future because there are other areas where ethanol
23 plants are going to be able to do CCS.

24 And, if you're not able to access that
25 infrastructure and reduce the carbon intensity score

1 along those lines, then the business is going to be
2 under significant pressure and might ultimately fail.
3 And we see that that environmental -- or economic
4 impact would go away.

5 So I think that's part of it also.

6 MR. WHIPPLE: If we could turn to page 16
7 of the exhibit.

8 BY MR. WHIPPLE:

9 Q. So, on this page, would you agree that the
10 report explains it is covering the Trailblazer
11 pipeline, Navigator pipeline, and Wolf Carbon pipeline
12 as well?

13 A. As well as Summit Carbon Solutions,
14 correct. Those are the proposed pipelines in the
15 region.

16 Q. Correct. So it's a multi-pipeline report;
17 correct?

18 A. Yes.

19 Q. And it's a regional report; correct?

20 A. It's a what?

21 Q. A regional report; correct?

22 A. Yeah, I think regional is fair.

23 Q. I mean, I don't see Trailblazer in Iowa.

24 Do you?

25 A. No. I think this -- I think this map shows

1 broadly the fact that this is under consideration in
2 the region. And, apart from that, every ethanol plant
3 in the country is carefully and diligently reviewing
4 their carbon strategy moving forward.

5 And, if we don't support this project and
6 build the infrastructure, ethanol plants and renewable
7 fuel facilities in surrounding states are going to
8 have a considerable advantage over the plants in Iowa.

9 Q. But what I'm trying to explore with you,
10 Mr. Pirolli, is the impact of this pipeline.

11 So identify in this exhibit, please, where
12 it isolates the impact of the Summit pipeline.

13 A. I'm not -- I'm not sure if it isolates that
14 impact or not. I mean, you pointed out it's a -- it
15 takes a broader look. I think it's an independent
16 report.

17 Q. So it's not specific to Summit, is it. It
18 doesn't isolate the Summit impacts.

19 Correct?

20 A. I don't believe so. It does impact the
21 impact -- it does contemplate the impact of carbon
22 capture and storage on ethanol. On a plant level.

23 Q. But it doesn't isolate Summit's impact,
24 does it.

25 A. No, I don't think so.

1 Q. So this exhibit also makes projections
2 about the impact of 42 Iowa ethanol plants; correct?

3 A. Are you asking if that -- well, there's 42
4 ethanol plants in Iowa. I don't know if all of them
5 are represented by -- on that -- you know, being
6 connected to one of the pipelines on that map or not.

7 Q. So would you know where it isolates
8 Summit's 13 partner plants?

9 A. Yeah, there's 12 of them that are -- that's
10 a map from earlier in the year when we had 12 plants
11 signed up that are currently considered under this
12 docket.

13 Q. Sorry. I'm not referring to the map any
14 longer.

15 A. Okay.

16 Q. Just where in the report does it make
17 projections about your 13 plants?

18 A. I'm not -- I don't think it does
19 specifically about our plants.

20 Q. So this study also attempts to make
21 projections about both the 45Q and the 45Z tax
22 credits, doesn't it.

23 A. I believe those are both considered in
24 there.

25 Q. Is Summit proposing, as an entity, to

1 utilize the 45Z tax credits?

2 A. Indirectly. As we've stated publicly --
3 and we've talked about it quite a bit and you can find
4 it out there. The 45Q is the owner of the capture
5 equipment. 45Z would go to the producer of the
6 low-carbon intensity renewable fuel. And so, if it's
7 one or the other, we'd work with our partner plant to
8 capture the higher one.

9 Q. Yeah, it's not my intention to get into the
10 offtake agreements or to the terms of those.

11 A. Right.

12 Q. I know Bret's got his finger on the button,
13 but I'm looking at page 3 of your rebuttal testimony,
14 starting at line 21, where you testify about 45Q and
15 45Z.

16 And so you talk about them at a high level.
17 And I just want to talk about them at a high level.
18 And I want to explore what's in your Rebuttal
19 Exhibit 1 and isolate the impact of the project.

20 But, to the extent 45Z is in play, it's
21 utilized by ethanol producers; correct?

22 A. Correct.

23 Q. And so help me understand --

24 A. Utilized or claimed.

25 Q. Yeah. So help me understand your rebuttal

1 testimony here.

2 A. I think you need to go down to the next
3 page.

4 Q. It kind of straddles the pages there. Just
5 yes or no, will Summit Carbon Solutions, LLC, as an
6 entity, claim the 45Z?

7 A. No, the plant would claim the -- the
8 renewable fuel producer, our partner plant, would
9 claim the 45Z.

10 Q. Okay. So, returning then to Rebuttal
11 Exhibit 1, the report, wouldn't you agree that a
12 substantial portion of this report relates to 45Z and
13 its impact on ethanol plants?

14 A. Yeah, there's a lot in that report about
15 45Z.

16 Q. And so a lot of the report doesn't help us
17 understand its impact on the Summit pipeline, does it.

18 A. Well, I think it sets up the economic
19 foundation of understanding the range of potential
20 impacts of the 45Z and how that's calculated, a lot of
21 background study on that, and then we can take that
22 and more easily relate what the -- you know, how
23 that's going to generate revenue for the plant and
24 then discuss and understand how that relates to the
25 revenue share model that we have.

1 Q. But the report really tells us about the
2 beneficial impact on ethanol plants of 45Z credits,
3 doesn't it.

4 A. Correct.

5 Q. But you've testified Summit is not claiming
6 the 45Z credits.

7 A. We don't claim those directly. But just
8 like the owner of the compression equipment, the
9 capture equipment, claims the 45Q, which is Summit,
10 and we would share that with the plants.

11 If it's a scenario where the plants were to
12 collect the 45Z in lieu of us collecting the 45Q,
13 because right now -- and I'm not a CPA, but I've read
14 the IRS code a few times, and it says thou shall not
15 claim both the 45Z and the 45Q in the same tax year at
16 the facility. You select one or the other is our
17 understanding.

18 If the plant selects the Z, then they would
19 share revenue back with us. If we select the Q, we'd
20 share revenue with them.

21 Q. So, at best, in terms of understanding the
22 pipeline petition, this report is -- I mean, it
23 describes indirect benefits at best; right?

24 A. It describes the buildup of the revenue in
25 the 45Z.

1 Q. Where in this study, Rebuttal Exhibit 1,
2 does it isolate the benefits of Summit's use of the
3 45Q credits?

4 A. I don't -- I don't know that it does. I
5 don't think it does.

6 Q. So what does this exhibit really tell us
7 about Summit's project specifically?

8 A. Well, I think it shows a couple things.
9 The buildup of the 45Z, the economic impact and
10 importance of the ethanol industry in the state of
11 Iowa, and we can then deduce that if we don't build
12 this critical infrastructure, if we don't reduce the
13 carbon intensity score and keep this industry
14 competitive, not only to other ethanol plants but I
15 believe on a broader scale within transportation in
16 general from an emissions perspective, that the
17 industry is going to be under pressure, the ethanol
18 industry goes away, and we see what the economic
19 impact negatively would be on the state's economy and
20 down to the farm level.

21 And I think those are the broad components
22 of the report and why it's relevant and why it's
23 important.

24 Q. And it talks about that from the standpoint
25 of 42 plants; correct?

1 A. Yeah, overall.

2 Q. But not your 13 plants.

3 A. Well, they're among those. They're among
4 those, and I think it also -- you can look at it from
5 high level and billions of dollars of revenue,
6 billions of dollars of additional GDP, versus the
7 billions of bushels of corn produced and come up with
8 a per bushel number that relates to farm income and
9 relates to additional ethanol plant profitability. So
10 it's pretty easy to draw those lines.

11 Q. But you understand we're not making public
12 policy here. We're trying to identify and attribute
13 to Summit's pipeline its specific benefits.

14 A. Right.

15 Q. And this report doesn't really do that very
16 well, does it.

17 A. I think it's very relevant information that
18 builds up the revenue model and shows the importance
19 of this industry to the state from an independent
20 report.

21 Q. I want to move on to property taxes. Which
22 I think everybody loves. At least county supervisors
23 like them.

24 In your rebuttal testimony at page 4,
25 line 12, you say Summit will pay \$30 million per year

1 in new property taxes in Iowa.

2 And I want to ask you, is that an estimate
3 or is that a precise calculation?

4 A. I believe that's an estimate that was
5 produced by Ernst & Young in a study that Summit
6 commissioned in '21 or '22. And I think that Ernst &
7 Young is going to testify about that.

8 Q. But it's in your rebuttal testimony. So
9 I'm going to ask you about it.

10 How is that amount determined?

11 A. It was based on the investment that we will
12 make by both the compression facilities and the
13 pipeline and the property taxes that will be assessed
14 based on that infrastructure that's constructed across
15 the counties. And looking at the underlying tax rates
16 and they looked at -- we hired Ernst & Young to do
17 that analysis, and they took all the factors into
18 account.

19 Q. But you would have had to provide them the
20 data. I mean, they wouldn't know what your project
21 estimates are.

22 A. I believe Summit provided them the data of,
23 you know, the estimates on the capture equipment and
24 the pipeline construction costs and all those areas.

25 Q. Did it use a gross cost of equipment and

1 capital?

2 A. I believe it was -- yeah, it was some type
3 of the total capitalized costs.

4 Q. Aren't property taxes based on assessed
5 value?

6 A. I'm not sure. I'm not a tax expert. But I
7 believe they used similar formulas to what's been used
8 on projects that have already been completed as well.
9 They looked at Dakota Access and natural gas pipelines
10 and used a similar formula and philosophy.

11 Q. What levy rate was assumed?

12 A. I don't know.

13 Q. You say it's --

14 A. They did it all the way across -- 92
15 counties, or something like that, across the projects.
16 North Dakota, South Dakota, Minnesota, Iowa, and
17 Nebraska.

18 Q. You say it's going to be \$1 million per
19 year per county.

20 A. That's -- I mean, we're in 32 counties.
21 It's approximately 1 million per year per county that
22 Summit crosses. There's some counties where it's
23 considerably more than that and a few counties that we
24 don't have many miles of pipeline in where it will be
25 less than that.

1 Q. So it's not really a million for each
2 county, is it.

3 A. It's approximately --

4 Q. It's an approximate.

5 A. -- a million per county.

6 Q. If you were a county supervisor, would you
7 rely on this figure to build a public budget?

8 A. If I were a county supervisor, I would take
9 the report that Summit published and ask additional
10 questions about it. And I wouldn't budget for that
11 money to come into us until the pipeline had been
12 built and the assessments had been made and we knew
13 when that money would be coming in.

14 Q. Is that another way of saying it's a very
15 speculative figure?

16 A. I don't think it's speculative. I don't
17 build a budget and plan to spend money until I know
18 when that income is going to be coming to us.

19 Q. I want to talk some more about benefits.
20 In your rebuttal testimony at page 4, line 20, you say
21 you believe a participating ethanol plant will earn,
22 on a net basis, an additional 10 to 35 cents per
23 gallon.

24 That's a pretty broad range. Can you be
25 any more specific with the benefit?

1 A. Well, I could tell you the buildup of it,
2 but that's a -- it is a wide range. You know, part of
3 this is that there is a base benefit for a number of
4 years related to the tax credits, but there's
5 fluctuation as well related to carbon markets, which
6 create the upside.

7 So upside benefits from LCFS markets or
8 voluntary carbon markets create that significant
9 upside. As well as -- you know, there's a range --
10 you were asking earlier about 45Z and 45Q.

11 The 45Z value appears to be higher than the
12 45Q, but it's only, right now, contemplated for years
13 '25, '26, and '27. And so, after that, if it's not
14 renewed, you know, we fall back to the 45Q tax which
15 has a lower value.

16 Q. So you're saying -- this estimate, is that
17 for 2025? Or is that for 2025 through 2037? Is there
18 a limit --

19 A. I would say, you know, for the first -- you
20 could look at it like that, but, in a 45Q year with
21 lower carbon values, it might be closer to 10 cents.
22 In a 45Z year with higher carbon values, it could be
23 35 cents. It could be more than that.

24 Q. So what you're saying, just to be clear, is
25 this range, this 10 to 35 cents per gallon, is

1 something that you're projecting out across the range
2 of the tax credit eligibility.

3 A. Yeah, or beyond. We don't really -- we
4 don't really say that. That it's during that duration
5 or it's not.

6 Q. Yeah, because it doesn't say, I'm trying to
7 understand that. So tell me, 10 to 35 cents, is that
8 in 2025 or every year -- help me understand the time
9 period over which you're projecting 10 to 35 cents a
10 gallon.

11 A. I think into perpetuity if we build the
12 project.

13 Q. Is that estimate specifically attributable
14 to Summit? Or would an ethanol plant partnering with
15 one of the other pipelines achieve a similar benefit?

16 A. This is -- this is particularly
17 attributable to our -- you know, an ethanol plant that
18 is participating in our project. We model things out
19 broadly if a plant would do an on-site sequestration
20 or something, but that's just speculation. This is
21 more along the lines of what one of our customers or
22 partner plants would earn.

23 Q. In your rebuttal testimony at page 5,
24 line 4, you say that roughly 53 percent of Iowa's corn
25 is sold to ethanol producers.

1 What is the source of that figure?

2 A. I mean, that's basically the Iowa corn
3 production compared to the amount of corn that's grown
4 in the state. And that's on the low end. It's
5 generally higher than that.

6 Q. What authority tells us that's the number?
7 Is that a USDA number?

8 A. I think you can pull numbers from a few
9 different, but you can get corn production from USDA,
10 you can get ethanol production from a number of
11 sources. EPA. There's a number of different reports.

12 Q. But where did you pull it from? In
13 preparing your testimony, where did you get that
14 number?

15 A. That's -- those are pretty widely known
16 numbers. So they could come from a lot of different
17 sources.

18 Q. You also say here that a more consistent
19 revenue per acre helps support higher land prices.

20 Can you quantify how much?

21 A. I think -- you know, when we look at values
22 of commodity prices over time, they're consistently
23 linked to farmland values.

24 So, since the early 2000s, you know, before
25 the ethanol industry, when you look at consistent

1 prices of corn at two or two fifty a bushel and
2 compare it to the land values that we had for a long
3 time, compared to today, and those trends over time
4 where now we're averaging \$5.00 or more per bushel of
5 corn consistently and we've got land values that are
6 significantly higher, those two are linked.

7 Iowa State's website is a good place to go
8 and view that type of information.

9 Q. How about a yes or no. Can you quantify
10 it?

11 A. Are you asking me if there's a link between
12 corn prices and soybean prices and value per acre?

13 Yes.

14 Q. No. In your testimony, you say it supports
15 higher land values. Quantify that if you can.

16 A. Okay. You know, if the average yield in
17 Iowa on corn is 180 bushels per acre, and we get a
18 dollar per bushel more for corn, there's \$180 per acre
19 over -- you know, you can do the discounted value of
20 those cash flows, and that creates the additional
21 value that someone would be willing to pay for that
22 land.

23 Q. So, unlike on the ethanol where you're
24 projecting 10 to 35 cents, you're not projecting a
25 certain number of dollars here per acre. Not in your

1 testimony.

2 Correct?

3 A. I guess -- you know, I guess not. There's
4 also -- are you asking for the complete link there all
5 the way back to the farm?

6 Q. Nope. I'm just asking whether you
7 quantified it in your testimony.

8 A. Not that -- not that link, but, when we
9 look at it -- you know, the ethanol plants that we're
10 partners with, the vast majority of them are owned by
11 the local communities, investors, farmers in that
12 area. Local Iowa businesses. And they benefit
13 directly either by the higher corn prices or dividends
14 back from the ethanol plants.

15 So, I mean, there's definitely a strong
16 link there.

17 Q. Did you hire an economist to produce a
18 study that produces a per dollar per acre benefit?

19 A. We have not.

20 Q. It was, yeah, a simple question. Right?

21 In your direct testimony, now at page 3,
22 line 10, you're talking about the purpose and need for
23 the project. And you number three purposes.

24 The third is to benefit the environment by
25 removing CO2 from the atmosphere.

1 Can you quantify that benefit?

2 A. Sure. So an acre of corn absorbs about
3 14 metric tons of CO2 from the atmosphere every year.
4 About half of that goes with the seed and the corn
5 kernel to an ethanol plant.

6 And, through the ethanol fermentation
7 process, approximately two tons per acre are released
8 back -- that's the rough calculation. Equal parts of
9 the ethanol and CO2. A couple tons per acre of CO2
10 equivalent are released via fermentation. We capture
11 that and permanently store it.

12 So there are environmental benefits from
13 removing CO2 from the atmosphere, and I think the
14 economic tie-back to that is from the carbon dioxide
15 removal credits that are available for sale or the
16 higher value of ethanol by selling it into a
17 low-carbon fuel standard market.

18 Q. Did you hire an environmental consultant to
19 put a specific figure on the amount of carbon that
20 your project will reduce?

21 A. So we've had several studies done around
22 that. Some that we've commissioned, some that -- you
23 know, in general, the math is out there. The formulas
24 are pretty clear.

25 Q. Where in the record can we find how many

1 millions of tons of carbon will be pulled out of the
2 environment?

3 A. I think it's equivalent -- on a gross
4 basis, it's equivalent to how much we will transport
5 and store from the ethanol plants every year.

6 On a net basis, we remove the impact of
7 emissions that are created from the energy that's
8 needed to capture, compress, transport, and store.
9 Which is roughly 10 percent. And there's models out
10 there that show that.

11 So, right now, if we're at, you know,
12 9 1/2 million tons, the net removal per year would be
13 about 8.6.

14 Q. Do you know whether the pipeline will
15 produce a net reduction in greenhouse gases? Net.

16 A. Well, the project, in general, holistically
17 will. And we need the pipeline to transport that.

18 Q. Does your testimony or does Rebuttal
19 Exhibit 1 quantify that? Does it attach a number to
20 the amount of greenhouse gas reduction?

21 A. I believe we talk about greenhouse gas
22 reduction and CO2 removal extensively in my testimony
23 and others. I mean, we can see right there in
24 line 16, 17, 18. "Utilizing the project to capture
25 and permanently store their CO2 emissions," that's the

1 ethanol plants, "enables participating ethanol plants
2 to reduce their carbon footprint by as much as
3 50 percent putting them on path towards producing a
4 net-zero carbon fuel."

5 MR. WHIPPLE: I have no further questions,
6 Your Honor.

7 BOARD CHAIR HELLAND: Thank you.

8 Mr. Taylor, you're up next.

9 However, we're going to take a quick
10 15-minute break and be back on the record at 10:20.
11 We'll be gone for 17 minutes. Thank you.

12 (Recess taken at 10:03 a.m.)

13 (Hearing resumed at 10:21 a.m.)

14 BOARD CHAIR HELLAND: It's 10:21. If
15 people want to go ahead and take their seats, we will
16 go back on the record.

17 Mr. Pirolli, I'll remind you that you are
18 still under oath.

19 Mr. Taylor.

20 MR. TAYLOR: Thank you.

21 CROSS-EXAMINATION

22 BY MR. TAYLOR:

23 Q. Mr. Pirolli, on page 3 of your direct
24 testimony, if we can get that up, you say -- I don't
25 have a line number in my notes, but you say that the

1 pipeline will benefit the environment by removing CO2
2 from the atmosphere. That's on line 10 it looks like.

3 Isn't it true that the process does not
4 remove CO2 from the atmosphere. It attempts to
5 prevent CO2 from going into the atmosphere.

6 Correct?

7 A. That's not correct.

8 Q. Why not?

9 A. Because it's not a -- it's not an avoidance
10 project, it's a removal. Because the CO2 is removed
11 biogenically by the corn plants when they grow and
12 through the photosynthesis process. Corn plants
13 absorb CO2 from the atmosphere as they grow, put the
14 carbon into the corn kernel, some of that goes along
15 to the ethanol plant, it's released during
16 fermentation, and that's the CO2 that we're capturing
17 and putting back down underground.

18 And we look at those removals on a net
19 basis. Which is net of any additional emissions
20 created through energy required in the process.

21 So, from that perspective, these are
22 considered removals.

23 Q. But there is such a thing as direct air
24 capture.

25 Are you aware of that?

1 A. Yes.

2 Q. This is not direct air capture; correct?

3 A. No, it's not -- direct air capture
4 generally refers to a mechanical process using fans
5 and filters. This uses plants instead of the fans and
6 filters. So we call it Mother Nature's direct air
7 capture.

8 Q. But you're not taking the CO2 out of the
9 atmosphere, are you. You're preventing it from going
10 into the atmosphere from the ethanol plant.

11 Correct?

12 A. That's the -- that is the point that we are
13 capturing the CO2, but it is removed in the first
14 place on the farm by the corn plants.

15 Q. So --

16 A. So direct air capture, Mr. Taylor, you can
17 see a -- you know, it's a very short line from fans
18 and filters remove the CO2, it's adsorbed by some type
19 of a filter or material and chemical, and then there's
20 a process by which that carbon is released from the
21 filter material. And, at that point, it's captured
22 and compressed and something else is done with it.
23 And instead of using fans and filters, we're using
24 plants. We're using biology to do it.

25 Q. But isn't it true, as you say, that the

1 corn in the field sequesters carbon dioxide?

2 A. Well, while plants grow, there is some
3 benefit to the soil also. So, when a corn plant
4 absorbs 14 -- on an acre of corn, and this depends on
5 the yield and number of plants, but roughly 14 tons
6 per acre while the plants are growing.

7 Roughly half of that stays in the field
8 with the corn plant. The stalk and the stems and the
9 cob and the leaves. You know, some of that is
10 reincorporated, and that carbon, those nutrients, stay
11 in the soil. A lot of it is released back via the
12 carbon cycle.

13 However, we're looking at -- roughly half
14 of the carbon that stays with the corn kernel that
15 goes to the ethanol plant, some of that goes on with
16 feed products, some of it goes on with corn oil, a lot
17 of it goes on with the alcohol. But a portion also is
18 released when the yeasts consume the sugar.

19 So they consume sugar, those are those
20 short carbon chains. Half of that goes to alcohol,
21 half of it goes to CO₂. That's what we're capturing
22 there.

23 So the corn plants absorb CO₂ out of the
24 air. We're reclaiming that and we're putting that
25 back down underground.

1 Q. But let's look at the process here. The
2 corn growing in the field sequesters carbon.

3 A. Yes.

4 Q. Yes. The corn is then harvested, taken to
5 the ethanol plant instead of being used for feed or
6 some other thing that would keep the carbon in the
7 corn, and the ethanol plant creates more carbon that
8 you have to capture in order to keep it from going
9 into the atmosphere; correct?

10 A. Well, I think -- I think back up to what
11 you were saying at first. When corn is harvested in
12 Iowa -- you know, the combine shells the corn. So the
13 only thing that leaves the field are the corn kernels.
14 And whether that goes to an ethanol plant or it's fed
15 to hogs or chickens or transported somewhere else in
16 the world to do something else, the same amount of
17 crop residue stays in the field whether the kernels go
18 to an ethanol plant or to a hog farm.

19 Q. But the carbon would stay in the kernels,
20 it wouldn't be transformed into ethanol and producing
21 carbon dioxide that you claim has to be captured;
22 correct?

23 A. So the same amount of carbon stays in the
24 field, right, and then the kernels go on and something
25 else is done with them. And through the cycle,

1 whether an animal consumes the corn, something happens
2 on that chain, or we convert it to -- you know, some
3 of it to alcohol and some of it to feed products,
4 which are ultimately fed, either you capture CO2 off
5 of fermentation and sequester it or all of that carbon
6 eventually is going to be released back into the
7 atmosphere. In some form.

8 Q. Farther down on page 3 of your testimony
9 you say that the pipeline will make ethanol a net-zero
10 fuel.

11 Have you done any calculations on what it
12 would take to make ethanol a net-zero fuel?

13 A. Yeah, we --

14 Q. Have you done any calculations.

15 A. Yes. And this says "to reduce their carbon
16 footprint by as much as 50 percent," which is the
17 claim that's factual and has been backed up
18 extensively, "putting them on the path towards
19 net-zero carbon."

20 This specifically -- you know, if the CI
21 score of the plant is 60, it's not going to reduce the
22 carbon score by 60 points, it's going to reduce it by
23 30 or 35. So it's putting them on a path. And,
24 without doing this, it would be very difficult, if not
25 impossible, to get ethanol to become net-zero carbon.

1 But this is a key fact in doing that.

2 And there's other things that would need to
3 happen, but this is the largest opportunity.

4 Q. But you have not done any calculations.

5 A. We've done extensive calculations.

6 Q. Who is "we"?

7 A. Summit and our environmental engineers, and
8 I think a lot of it's available out there generally by
9 the industry as well. It's a process, as I mentioned
10 earlier, that -- every ethanol plant that I'm aware
11 of, that I've worked with extensively in our project
12 and outside of that, is very focused on their carbon
13 strategy.

14 And so CCS can have a benefit. Process
15 improvements can have benefits. There's significant
16 work being done on the production of corn and feed
17 stocks upstream. So there's a lot of things that
18 would need to happen. And each of those has an impact
19 on the carbon score. And those are -- those numbers
20 have been calculated and are widely known.

21 Q. But you haven't provided them with your
22 testimony; correct? The calculations I mean.

23 A. I thought some of those calculations were
24 included either in the testimony or in the responses
25 to the questions. I know we went through those

1 calculations that equate how many tons of CO2 are
2 produced along with one gallon of ethanol. So I think
3 that's all been provided.

4 Q. On page 5 of your direct testimony,
5 starting at line 5, you talk about the 12 ethanol
6 plants and a variety of industrial facility owners in
7 Iowa and surrounding states that you're offering
8 Summit's services to. And you include ethanol plants,
9 nitrogen production, and other industrial sites.

10 What other industrial sites or what other
11 industrial facilities are you referencing there?

12 A. Other large industrial emitters of CO2.
13 Which could be cement plants, steel mills, power
14 plants. Those would incorporate the majority.

15 Q. Have you been soliciting those kinds of
16 customers?

17 A. Yes.

18 Q. And I take it you've had no takers at this
19 point.

20 A. Well, we don't have any transportation
21 agreements signed yet.

22 Q. Would those other industries sign what you
23 call the transportation service agreement or would
24 they sign offtake agreements?

25 A. In general, they would sign a

1 transportation services agreement.

2 Q. Why that instead of an offtake agreement?

3 A. Just because of the economics and the
4 nature of some of those facilities. The business
5 model that we created for ethanol works very well for
6 that industry for a number of reasons.

7 Whereas, things like nitrogen fertilizer
8 production, and I'm not an engineer or an expert in
9 that process, but it relates to -- the way CO2 is
10 produced and sometimes reused in that process, it's
11 pretty integral in the production of fertilizer.

12 And so that capture equipment is also very
13 incorporated within the process at the facility. And
14 they would -- those companies generally are interested
15 in making those investments and in building that
16 infrastructure. And, in that situation, they would
17 claim the 45Q tax credit as the owner of the capture
18 and compression facility and they would pay us for
19 transportation services.

20 Q. So why haven't these other industries
21 signed agreements with Summit?

22 A. Well, as I said, we're close with several,
23 but a lot of it came down to it was -- they were
24 researching it when the 45Q tax credit was at \$50 a
25 ton and were getting the economics around there, and

1 it was unclear whether or not it would be economically
2 viable for them to do it at a \$50 45Q.

3 But, once that was increased to \$85 per ton
4 and more clarity has been given around that, that has
5 pushed some industries over the hump, I'd say, on
6 making it an economically viable investment.

7 But it's a significant -- a significant
8 project. I mean, you know, tens of millions of
9 dollars, very complex. The equipment and the
10 technology exists, but they need to go through the
11 process of engineering, design, and their own RFP
12 process to line up construction and equipment and get
13 all of that to a point where they would be able to
14 look at that, plus our transport agreement, and say,
15 okay, this is a holistic business model that's going
16 to work and then move forward. And those projects
17 take a while to get developed.

18 So, as I said, we're close with some,
19 there's been a redacted transportation agreement
20 that's under negotiation that's been provided that you
21 guys have seen, and we're continuing to work forward
22 on those.

23 Q. And it's true, is it not, that with these
24 other industries, unlike the fermentation process from
25 ethanol plants, it's much more difficult and expensive

1 and involved to create the carbon dioxide in a form
2 pure enough to put on your pipeline; correct?

3 A. That's correct, Mr. Taylor. Generally,
4 because the cost of -- the cost is affiliated with the
5 purity of the CO2 gas that's being captured.

6 So a process called steam methane
7 reforming, which basically cracks natural gas and
8 creates hydrogen and carbon dioxide, that produces
9 roughly an 80 percent pure CO2 stream.

10 You know, so, after ethanol, that's
11 97 percent pure CO2 coming off of fermentation, all we
12 have to do is compress and dehydrate. Then you get a
13 stream that's 80 percent pure.

14 So there's more impurities that have to be
15 removed from that stream. So that relates to the cost
16 to your point.

17 All the way down to what's called
18 post-combustion or anytime something is burned and you
19 take the flue gas stream that could be 4 to 10 percent
20 CO2, that then would be incrementally more expensive
21 to remove the CO2 from that very low-concentration
22 stream.

23 So it relates to the concentration.

24 Q. And so, even with the increased 45Q tax
25 credit, with these other industries it's still sort of

1 a tenuous economic proposition as to whether they want
2 to go ahead and sequester the carbon and put it on
3 your pipeline; correct?

4 A. I believe it's definitely moved the
5 benchmark. There's some processes and facilities that
6 now believe that it's a viable process and then
7 there's some that are still unsure about it. And it's
8 a large investment.

9 Q. Mr. Jorde asked you about the open season
10 that you claim Summit is going to have. As I
11 understand, you don't know when that's going to be;
12 correct?

13 A. Correct.

14 Q. And do you recall your deposition being
15 taken back on July 7?

16 A. Yes.

17 Q. And I asked you about the open season. And
18 you said that your legal team and regulatory team said
19 it's a requirement to do.

20 So who requires it?

21 A. That's a -- I guess it's more of an
22 internal requirement that we're putting on ourselves
23 to conduct that process in a formal manner.

24 Q. And didn't you also say in your deposition,
25 as far as you were concerned, you were already

1 conducting an open season with your solicitation of
2 various industries?

3 A. Yeah, in a manner, I think that's true.
4 That's why -- you know, I come to work every day,
5 that's what I was hired to do, is to bring more volume
6 and more partners into the system.

7 But, at the same time, in my understanding
8 there's certain specific and more formal processes
9 that go along with a formal open season that we're
10 going to conduct at some point in the future.

11 Q. I guess my question still is who is
12 requiring the open season? Is there some regulatory
13 agency that you think is requiring that?

14 A. Not at this point, but we feel that it's a
15 prudent process to go through.

16 Q. And isn't it true that the reason that your
17 legal and regulatory team said it's a requirement is
18 so that you can present the facade that Summit Carbon
19 Solutions is a common carrier?

20 MR. DUBLINSKE: Objection, Your Honor.
21 Legal conclusion and invades the attorney-client
22 privilege.

23 BOARD CHAIR HELLAND: Mr. Taylor, do you
24 have a response? Or do you just want to reword or
25 move on?

1 MR. TAYLOR: My response is that he said in
2 his deposition that it's a requirement, and I'm trying
3 to find out why he thinks it's a requirement.

4 MR. DUBLINSKE: I think that's asked and
5 answered. But, more importantly here, and maybe Wally
6 can -- Mr. Taylor can just rephrase the question, but
7 the way it was asked I understood to be asking about
8 his conversations with his legal and regulatory
9 attorneys, which would invade privilege.

10 BOARD CHAIR HELLAND: Any response?

11 MR. TAYLOR: He's the one that brought it
12 up in his deposition about talking to the legal and
13 regulatory team.

14 BOARD CHAIR HELLAND: You may answer if
15 you'd like. When you do move to the next question,
16 shortly after -- and, Mr. Taylor, you can move the
17 microphone around anywhere you like to get
18 comfortable. We've got plenty of room. There you go.

19 A. Sorry, can you repeat the question you'd
20 like me to answer?

21 MR. TAYLOR: Can the reporter read it back?
22 I've forgotten exactly how I asked it.

23 (The requested portion of the record was
24 read.)

25 A. So the answer overall to that is no. I

1 don't believe that whether or not we hold an open
2 season is a determining factor on whether the pipeline
3 is a common carrier or not. And certainly I don't
4 think that there's anything in that that's a facade.

5 BY MR. TAYLOR:

6 Q. In your rebuttal testimony on page 6
7 starting at line 14, you say "Moreover, we will be
8 conducting what is known as an open season to solicit
9 interested shippers and that we will be reserving
10 10 percent of the pipeline capacity for walk-up
11 shippers, those who are not shipping pursuant to a
12 long-term commitment."

13 Define more specifically what you mean by
14 "walk-up shippers."

15 A. I'd consider a walk-up shipper or an
16 uncommitted shipper, we hear some of those terms used
17 interchangeably, as a shipper that does not have a
18 long-term commitment on the pipeline. So they haven't
19 committed to consistently shipping and we have not,
20 therefore, reserved capacity for that shipper.

21 Q. And you say that those would not be
22 long-term contracts. What do you mean by "long-term"?

23 A. Well, some length of time that we deem is
24 reasonable to reserve capacity for that shipper. And
25 it could be a range of different things, but, as we

1 discussed earlier, there's going to be -- there could
2 be different classes of shippers. Those could
3 generally be related to the amount of volume and the
4 type of commitment that they're willing to make.

5 But the answer, Mr. Taylor, is years, not
6 days or weeks or months.

7 Q. So what shipper is going to spend millions
8 of dollars for capture equipment, for a pipeline
9 lateral up to their industrial facility, for a week or
10 a month or even a year contract?

11 A. What -- sorry, can I try and repeat that?
12 You asked me what shipper is going to spend the money
13 to make the investment to ship CO2 on our line?

14 Q. To be a walk-up shipper like you've
15 described. That it would be very short-term, no
16 particular commitment on volume.

17 A. Well, I think, you know, there's trade-offs
18 either way. So, generally, a committed shipper is
19 very interested in securing volume capacity on the
20 pipeline so that they know that we've reserved that
21 for them and we also know that we're going to have --
22 or any pipeline would know that they're going to have
23 consistent revenue coming in from that shipper and
24 there's requirements along with that.

25 There could be -- in the other case of an

1 uncommitted shipper, it doesn't mean that it's not
2 a -- that they're not going to be shipping for months
3 or years into the future, it just means that they have
4 not made that commitment and we have not reserved
5 pipeline capacity for them. So as long as there is
6 capacity on the pipeline that's not being used and
7 they wish to ship, they can do so.

8 And there's uncommitted shipping
9 arrangements that go on for years and years into the
10 future perpetually. It depends on whether or not a
11 shipper wishes to make that firm take-or-pay
12 commitment.

13 So there's trade-offs either way.

14 Q. But my question was why would a walk-up
15 shipper, as you've described it, very short-term, no
16 commitment in volume, spend the millions of dollars it
17 would take to buy the capture equipment, to build a
18 lateral to their industrial facility?

19 A. Well, maybe they -- maybe they feel that in
20 their analysis that they're comfortable with that --
21 whatever is the uncommitted capacity that's made
22 available on the pipeline, whatever pipeline it is,
23 natural gas or CO2 or anything else, that that
24 capacity is going to be there and they don't wish to
25 take the risk of a take-or-pay agreement. Which means

1 that if their facility is not operating, they still
2 have to pay the committed fees.

3 The commitments are bilateral. If they
4 want the capacity on the pipeline, they have to pay
5 whether they use it or not.

6 MR. TAYLOR: I have some further questions,
7 but we'll wait till the confidential session regarding
8 that. I'm not done yet, but just -- sorry. I hate to
9 get your hopes up.

10 BY MR. TAYLOR:

11 Q. It's true, isn't it, that the Federal
12 Energy Regulatory Commission, or FERC, does not
13 regulate CO2 pipelines?

14 A. That's correct. That's my understanding.

15 Q. And so when you talk about a tariff rate,
16 there is no agency that imposes or reviews a tariff
17 for CO2 pipelines, isn't that true?

18 A. That's true.

19 Q. So why do you use the term "tariff rate"?
20 There's no tariff.

21 A. Well, I was asked earlier if we established
22 that internally. And we have. And so that's part of,
23 you know, preparing for, you know, the open season and
24 committed volumes within the transportation system.

25 So we have established the rates internally

1 that we're going to use.

2 Q. But that's not technically a tariff, is it.

3 A. You can call it a transportation fee. We
4 know what the rate is to ship CO2 on the pipeline.

5 Q. And you talked about a requirement to not
6 discriminate. But that's a FERC requirement, isn't
7 it, for common carriers? There's no requirement like
8 that for CO2 pipelines.

9 MR. DUBLINSKE: Objection. Calls for legal
10 conclusion.

11 MR. TAYLOR: Well, he's the one that talked
12 about the non-discrimination. And I want to follow up
13 on that.

14 BOARD CHAIR HELLAND: Can you restate the
15 question, Mr. Taylor? Please.

16 MR. TAYLOR: Sure.

17 BY MR. TAYLOR:

18 Q. When you said that there's a requirement or
19 that Summit is not allowed to discriminate as to its
20 customers, what requirement were you referring to?

21 A. Well, similarly to the question on tariff
22 and requirements on the open season, these are
23 internal policies that we are considering. Right now
24 there's not FERC regulation on CO2, and by no means am
25 I a FERC expert, but we are planning for the future.

1 If something were to come along, have we taken the
2 correct, prudent steps to position ourselves in that
3 manner. And so I think there's -- we use those
4 instead of requirements. We consider some of the
5 policies to be best practice and we're contemplating
6 those.

7 Q. Mr. Whipple went over with you your
8 Rebuttal Exhibit 1, which is the ethanol study, I
9 guess you'd call it, paid for by the Iowa Renewable
10 Fuels Association. And that was done in February of
11 2023; right?

12 A. That's when it was released.

13 Q. And I think Mr. Whipple asked you why that
14 was prepared at that time.

15 Isn't it true that that was right in the
16 middle of the legislative session when the legislature
17 was debating bills to restrict eminent domain for
18 carbon dioxide pipelines?

19 A. I believe February 2023 is when the report
20 was released. I'm not sure when it was commissioned
21 or drafted. So, during that time, to your point,
22 there were bills in several states that were
23 contemplating different regulations along those lines,
24 but I don't think you can draw a -- say that this
25 report was done specifically at that time because

1 there were bills in place.

2 I think this was -- you know, when we look
3 through it, there's a lot of high-level things, but it
4 also helped contemplate how the 45Z tax credit --
5 which was part of the IRA and it was a new concept for
6 the industry, how that would be -- how that revenue
7 stream builds up and could affect renewable fuel
8 economics.

9 Q. But it certainly does focus on the carbon
10 dioxide pipelines that were being proposed at that
11 time; correct?

12 A. Sure.

13 MR. TAYLOR: I don't know if my page
14 numbers are just like your exhibits or not, but, on
15 Roman numeral page v, there's a legal disclaimer.
16 Keep going.

17 There it is.

18 BY MR. TAYLOR:

19 Q. Are you aware of that legal disclaimer?

20 A. I'm reading it now.

21 Q. You hadn't read it before?

22 A. Okay.

23 Q. Had you not read that before?

24 A. I'm sure I have, but it's a 93-page report
25 so I just wanted to glance at it again.

1 Q. And it says "While DIS," which is the
2 company that produced this, "has made every attempt to
3 obtain the most accurate data and include the most
4 critical factors in preparing the project, DIS makes
5 no representation as to the accuracy or completeness
6 of the data and factors used or in the interpretation
7 of such data and factors included in the project."

8 Doesn't that indicate to you that maybe
9 this Board, which is going to make a very important
10 decision, should perhaps be cautious about relying on
11 this report?

12 A. I don't -- I don't think that one sentence
13 in a disclaimer is anything that I'd be surprised
14 seeing in a legal disclaimer. So I don't think it
15 affects the viability.

16 I think this makes some important
17 high-level data points regarding the economics of
18 ethanol and the impact of CCS and the tax credits and
19 the revenue streams.

20 Q. The disclaimer goes on to say "The
21 responsibility for the decisions made by you," meaning
22 whoever is relying on this report, "based on the
23 project, and the risk resulting from such decisions,
24 remains solely with you," the entity making the
25 decision. In this case the Board.

1 Doesn't that indicate, again, that maybe
2 the Board should be cautious about relying on this
3 report?

4 A. I think it's pretty standard language.
5 And, just as with all data points out there, you have
6 to take into consideration what you're looking at and
7 what the impacts of that are and what weight to give
8 it. So I don't think anything in that legal
9 disclaimer is surprising.

10 Q. And, as we've said, this report was
11 prepared at the request and paid for by the Iowa
12 Renewable Fuels Association. And you're aware, aren't
13 you, that that association has been very vocal and
14 very active and very involved in a number of ways in
15 promoting the pipeline projects.

16 Correct?

17 A. Yes.

18 MR. TAYLOR: I think that's all the
19 questions I have. Thank you.

20 BOARD CHAIR HELLAND: Thank you,
21 Mr. Taylor.

22 Ms. Ryon.

23 MS. RYON: Thank you.

24

25

1 CROSS-EXAMINATION

2 BY MS. RYON:

3 Q. Good morning, Mr. Pirolli.

4 A. Morning.

5 Q. Most of the questions I had have already
6 been asked, so we're going to cut down my list quite
7 substantially, but I want to talk to you specifically
8 about how in your testimony you talked about needing
9 to lower the carbon index in order for Iowa ethanol
10 plants to remain competitive. And so I want to talk a
11 little bit about what that means in terms of being
12 competitive.

13 What kind of markets -- in the U.S., the
14 low-carbon fuel markets, what kind of markets could
15 they sell into?

16 A. The existing low-carbon fuel markets in the
17 U.S. are California and Oregon. And now Washington as
18 well. So the state of Washington.

19 Q. Earlier there was some discussion about
20 sustainable aviation fuel.

21 Is that a market that ethanol plants would
22 be able to sell into?

23 A. Yes, and that's growing and represents a
24 significant opportunity going forward.

25 We're seeing a shift in the technology

1 from -- traditionally what was used were vegetable
2 oils and distillers corn oil going into processes
3 like -- such that produced renewable diesel, which
4 also could be used to produce sustainable aviation
5 fuel.

6 However, looking at the demand long term
7 for sustainable aviation fuel, and the feed stocks
8 required for that, it appears that the alcohol-to-jet
9 process is going to be the most viable going forward
10 from the volume as well as the carbon intensity
11 standpoint and the economics.

12 And so that represents a very exciting
13 market for low CI ethanol going forward.

14 Q. And you also mentioned in your testimony
15 that there might be more international markets opening
16 up.

17 Could you talk a little bit more about
18 that?

19 A. Sure. So the country of Canada -- for a
20 number of years, there have been provincial low-carbon
21 fuel standard markets in Canada, but now the Canadian
22 clean fuel standard, the CFS, has been passed into
23 law. And that will take into account the CI reduction
24 on ethanol from the impact of carbon capture and
25 storage even if that were to happen outside of the

1 Canadian bounds.

2 So U.S. ethanol produced in the U.S., we do
3 CCS in the U.S., that still impacts the life cycle
4 analysis of the ethanol that would ship into Canada.
5 And Canada is the largest export market destination
6 for U.S. ethanol, and they're pushing forward on a
7 higher ethanol blend.

8 So Ontario, for instance, passed an E15
9 law. So we're going to see significant increase in
10 demand for ethanol because of higher blends as well as
11 the benefit passing back for higher values as the CI
12 score drops.

13 Q. And, with respect to the sustainable
14 aviation fuel, is that something that could expand
15 into international markets as well?

16 A. Absolutely. I think the demand for
17 aviation fuel globally -- obviously, it outstrips what
18 we're seeing in the U.S., but I think that using low
19 CI U.S. ethanol is -- that presents one of the best
20 economic opportunities out there.

21 So, based on cost of production, CI score,
22 availability, access to the markets, that's one of the
23 largest opportunities that we have. And that's
24 globally.

25 Q. As demand for sustainable aviation fuel

1 increases, could ethanol producers in other countries
2 sell their ethanol into that market in the U.S.?

3 A. So are you asking could ethanol producers
4 in other countries sell ethanol to the U.S. for use in
5 SAF or just in general?

6 Q. Specifically SAF but any other purpose.

7 A. Sure. Yeah. And the U.S. imports ethanol
8 already. So that's a possibility. I would think that
9 another option -- if a producer in another country was
10 going to make SAF out of alcohol that they were
11 producing, it's highly likely that they would do that
12 at the country of origin, but there's a lot of
13 different opportunities.

14 Q. So having a low CI score is important to
15 compete in these markets, but wouldn't Iowa's ethanol
16 plants still have to compete on price?

17 A. Yeah, that's a good point, but when you
18 look at generally how LCFS markets -- like California.
19 In general, when folks talk about LCFS markets in the
20 U.S., you're looking at California. It's the largest
21 gasoline market, and hence the largest ethanol market
22 for us, and has had a benchmark price for quite a
23 number of years.

24 And so when -- in general -- I mean, it can
25 work different ways, but, in general, if the delivered

1 ethanol price in California is, say, \$2.50 a gallon,
2 that's what a -- you know, a buyer, blender, in
3 California is willing to pay. And then the premium
4 for LCFS credits is on top of that.

5 So whatever the baseline is on the CI score
6 that's agreed to, any benefit on top of that gets paid
7 to the ethanol producer.

8 And there's generally an interest in buying
9 the lowest carbon gallon that's available because
10 there's only a set number of gallons that can be
11 blended into the market because that's directly in
12 relation to the amount of gasoline that's sold. And
13 so if there's 14 billion gallons of gasoline sold in
14 California every year, 1.4 billion gallons of ethanol.
15 Because it's 10 percent.

16 So, in order to maximize the number of
17 credits, the ethanol gallon should be the lowest CI
18 gallon available. So, if the base price for ethanol
19 delivered in California is \$2.50 a gallon, that's set
20 at whatever CI score is agreed to between the parties.
21 And, if the CI score is lower than that, then the
22 buyer is paying a higher LCFS premium on top of the
23 \$2.50 a gallon.

24 Q. Okay. So, in markets like that, there's
25 some stability in terms of price. But, if we're

1 looking at sort of an industry, like sustainable
2 aviation fuel, wouldn't purchasers have an impact on
3 the price?

4 A. Yes, I think so. There's quite a few
5 different variables that could impact the price that a
6 buyer -- I mean, typically you're talking about an
7 airline -- is going to be paying.

8 Q. So it is possible that Iowa's ethanol
9 plants would have to compete with international
10 ethanol plants in the sustainable aviation fuel
11 market?

12 A. That's possible.

13 Q. Summit Carbon Solutions is a subsidiary of
14 Summit Agricultural Group; correct?

15 A. I don't know if I'd describe the
16 relationship like that. Summit Agricultural Group was
17 the initial founder and developer, but, since then, we
18 have raised money from a number of investors and they
19 own a share, but it's not really a subsidiary
20 relationship.

21 Q. But it is essentially your parent company.

22 A. They are an investor and they have members
23 on the Board of Summit Carbon Solutions.

24 Q. Can you tell us how much of an investment
25 Summit Agriculture has?

1 A. I'm not sure if that's exactly been
2 disclosed publicly recently. It's a substantial
3 share, but it's a minority share. They're not the
4 largest shareholder.

5 Q. Are you aware of the other operations of
6 Summit Agricultural Group?

7 A. Somewhat.

8 Q. Are you aware of their recent announcement
9 to develop the world's largest ethanol-to-jet
10 sustainable aviation fuel facility?

11 A. I'm aware of that announcement, yes.

12 Q. Are you aware that Summit Agricultural
13 Group owns ethanol production facilities in Brazil?

14 A. Yes.

15 MS. RYON: Your Honor, at this point, I'd
16 like to make a motion.

17 I would like to move to have the Board
18 require Bruce Rastetter to attend to testify in
19 person.

20 Mr. Pirolli has testified that markets for
21 ethanol, including international markets and
22 sustainable aviation fuel markets, influence the price
23 of ethanol. Mr. Pirolli also testified that Summit
24 Agricultural Group owns competitors in the
25 international ethanol market as well as a large future

1 domestic purchaser of ethanol which could give Summit
2 Agricultural Group the ability to control the price of
3 low-carbon index ethanol in the U.S. In the meantime,
4 Summit Carbon Solutions can continue to make a profit
5 off of the 45Q tax credits.

6 The fact that Summit Agricultural Group
7 would own both the ethanol plants and the sustainable
8 aviation fuel purchaser and could impact market prices
9 looks like a vertically integrated monopoly that would
10 violate Iowa Code Chapter 553, Subsection 5, which
11 states that "a person shall not attempt to establish
12 or establish, maintain, or use a monopoly of trade or
13 commerce in a relevant market for the purpose of
14 excluding competition or of controlling, fixing, or
15 maintaining prices."

16 Whether or not Summit Carbon Solutions'
17 proposed pipeline is part of a corporate enterprise
18 that violates Iowa's anti-competition law is highly
19 relevant to whether the proposed pipeline promotes the
20 public convenience and necessity.

21 Therefore, it is necessary for the
22 Utilities Board to hear testimony from Mr. Rastetter
23 about the overall business model of Summit
24 Agricultural Group and how various other companies,
25 including Summit Carbon Solutions, fit into that

1 business model.

2 BOARD CHAIR HELLAND: Mr. Dublinske, I
3 assume you have a response?

4 MR. DUBLINSKE: I do, Your Honor, to the
5 extent that that was sort of an ambush and we have to
6 do it on the fly.

7 You know, no one has named Mr. Rastetter as
8 a witness in this case. If Ms. Ryon wanted to
9 subpoena Mr. Rastetter at a reasonable time instead of
10 bringing it up in the hearing as a grandstanding ploy,
11 there's been a long, long period of time to have done
12 that, to have requested a deposition, to have
13 requested his presence. That simply wasn't done in
14 the normal course.

15 In any event, the applicant is Summit
16 Carbon Solutions, not Summit Agricultural Group. The
17 testimony has been that Summit Ag is a minority
18 investor, that Mr. Rastetter is one of many board
19 members, he is not the CEO of the company. There is
20 simply no evidence that he has the type of control
21 that Ms. Ryon is speculating about, and it's certainly
22 a reach to suggest that anything in evidence suggests
23 that there can be some sort of a monopolizing vertical
24 integration when not one of the 12 plants that are
25 currently contracted for this project is a Summit Ag

1 affiliate or a Summit Ag plant. And there's no
2 evidence of market concentration in SAF, in ethanol,
3 in literally anything related to this.

4 So I think that this is a highly frivolous
5 motion, and I would urge the Board to deny it. But,
6 if the Board has any inclination to do otherwise, I
7 would ask that they require Ms. Ryon put her motion in
8 writing so we can have a fair opportunity to brief our
9 response.

10 BOARD CHAIR HELLAND: Do you have a
11 response, Ms. Ryon?

12 MS. RYON: I would be happy to put that
13 motion in writing.

14 BOARD CHAIR HELLAND: The Board is going to
15 take a five-minute break and discuss this and be right
16 back. So five minutes or less. We will go off the
17 record.

18 (Recess taken at 11:13 a.m.)

19 (Hearing resumed at 11:19 a.m.)

20 BOARD CHAIR HELLAND: Okay. It's 11:19.
21 We'll go back on the record.

22 Ms. Ryon, the Board will require you to
23 file your motion in writing. We will allow two days
24 for responses.

25 And, as a short reminder to all the

1 parties, witness lists were due on August 14th and
2 were later required to be updated, as discussed on the
3 first day of the hearing, by August 25th.

4 So we'll go ahead and look forward to your
5 motion in writing, and there will be two days to
6 respond.

7 MS. RYON: Thank you, Your Honor. And I
8 don't have any further questions for the witness.

9 BOARD CHAIR HELLAND: Okay. Thank you.
10 Ms. Kohles.

11 CROSS-EXAMINATION

12 BY MS. KOHLES:

13 Q. Hello, Mr. Pirolli. I'm Jean Kohles with
14 Kohles Family Farms. And I have a few questions more
15 related to the landowner.

16 Is it correct that you stated that Micah
17 Rorie set the value of the land and the amount of
18 compensation to landowners for easements?

19 A. I don't think I said that. I think there
20 was a question related to the difference between fixed
21 payments and ongoing payments and landowner
22 compensation, and I said that Mr. Micah Rorie is --
23 that's his area of expertise as the director of land
24 and that area of responsibility.

25 Q. So he's the director of land for Summit.

1 A. He's in charge of right-of-way acquisition.

2 Q. Okay. So he would be the one that would
3 set the price? Or who would set the price?

4 A. He's involved in that process, and he, you
5 know, works with Jimmy Powell and the management team
6 and the group. So I think those are questions for
7 Micah.

8 Q. Jimmy Powell indicated that he was not the
9 one that made that decision in his testimony
10 yesterday.

11 So who would be responsible?

12 A. Well, that area does not come up to me. So
13 it depends on that level of decision. But that's not
14 the area of the company that reports up to me.

15 Q. Will the person who is responsible be
16 testifying and what's the name?

17 A. Well, I believe that Mr. Rorie can give you
18 quite a bit of insight into that process.

19 Q. Is he testifying in this hearing?

20 A. I believe so.

21 Q. Okay. That's good. Thank you.

22 You seemed pleased that the landowners were
23 receiving an up-front payment for signing the
24 easement.

25 Is that correct?

1 A. Well, I'm pleased that over 70 percent of
2 landowners along the route have found terms that they
3 believe are fair and reasonable. And that generally
4 includes an up-front payment. And I think that's the
5 set of terms that we have found overall, as an
6 organization, that has been most widely accepted.

7 So I'm -- I'm always pleased when we reach
8 voluntary easement agreements with landowners.

9 Q. Have you ever offered any of them a
10 staggered payment?

11 A. You know, I think it's been discussed, but
12 I have not offered anyone a staggered payment.

13 Q. Are you aware that those payments were
14 considered as a capital gain during one tax year?

15 MR. DUBLINSKE: Objection, Your Honor.
16 This just is not the right witness for this, and I'm
17 happy to suggest that Ms. Kohles take this up with
18 Micah Rorie. But I think this witness has testified
19 several times that he's just not the person that's
20 equipped to answer this line of questions.

21 BOARD CHAIR HELLAND: Ms. Kohles, did you
22 want to reply?

23 MS. KOHLES: Well, I do want to have my
24 questions answered. And, if you say that Mr. Rorie is
25 the person and he's going to be testifying, then I

1 will definitely hold my questions until later.

2 BOARD CHAIR HELLAND: Okay. Mr. Pirolli,
3 you can answer questions if you're able. Otherwise,
4 you can defer.

5 A. Yeah, that tax area is not my area of
6 expertise.

7 MS. KOHLES: No further questions at this
8 time then. Thank you.

9 BOARD CHAIR HELLAND: I don't see any other
10 questions from the parties.

11 The Board has a few questions. And we can
12 run through those pretty quickly and then we can break
13 for lunch -- well, I guess we'll turn the witness back
14 over to Summit before we break for lunch.

15 While we're going through our questions,
16 I'd just ask all of the parties to try to give us a
17 rough estimate for planning purposes on how much time
18 we think we'll need for confidential session.

19 We're trying to avoid shuffling parties in
20 and out and in and out of the hearing room. Which is
21 the reason we're doing confidential session at the
22 end. We can always reevaluate if that's not the best
23 way to do things.

24 But, to do that successfully, we'll kind of
25 need a reasonable estimate on the amount of questions

1 we'll have in confidential session.

2 MR. DUBLINSKE: And, Your Honor, I don't
3 want to interrupt the flow of the discussion with
4 Mr. Pirolli too much, but we will want to spend a
5 little bit of time at the conclusion of Pirolli
6 talking about that. Because we have some input that I
7 think will be relevant to that and perhaps some
8 suggestions to try and help move things smoothly.

9 BOARD CHAIR HELLAND: Mr. Pirolli, I
10 apologize, I know you've answered at least a couple of
11 these. However, it's difficult to check the questions
12 off when you're paying attention to testimony too.

13 On page 5, lines 5 through 9 of your direct
14 testimony, you describe how Summit Carbon will
15 continue to offer its service.

16 How does Summit Carbon go about making this
17 offering?

18 THE WITNESS: So, generally, from my role,
19 we have a good understanding but always try and
20 educate ourselves with what industries and
21 specifically which facilities are large CO2 emitters
22 and some basic understanding of the industry and the
23 economics involved in that.

24 We reach out to the companies and establish
25 a relationship and discuss the future carbon strategy

1 for their organization and their facilities
2 specifically that would be within our footprint, and
3 then continue to explore what a relationship would
4 look like for capture, transportation, and storage
5 services or any subset of that.

6 BOARD CHAIR HELLAND: Does Summit Carbon
7 examine every potential party who seeks to
8 interconnect?

9 THE WITNESS: What was the last of that?

10 BOARD CHAIR HELLAND: Does Summit Carbon
11 examine every potential party who seeks to
12 interconnect?

13 THE WITNESS: Absolutely.

14 BOARD CHAIR HELLAND: Can Summit Carbon
15 reject an entity who seeks to connect to its system?

16 THE WITNESS: Oh, I'm sure -- I'm sure that
17 we could. I mean, there's a range of basic criteria.
18 But I would say that our business is carbon capture,
19 transportation, and storage. And so we're looking for
20 partners, for shippers, that we can work with to bring
21 that volume economically onto our line that would make
22 a win-win relationship for both parties.

23 BOARD CHAIR HELLAND: What percentage of
24 the pipeline's transport capacity is already
25 committed?

1 THE WITNESS: Well, we consider the max to
2 be roughly 18 million tons. And right now we've got
3 about 9 1/2 million committed.

4 BOARD CHAIR HELLAND: On page 6, lines 5
5 and 6 of your direct testimony, you state "Unlike many
6 large infrastructure projects in Iowa, because Summit
7 Carbon is based in Ames, Iowa, more of these revenues
8 will stay in Iowa and be reinvested in Iowa."

9 What is considered as "more of these
10 revenues" and can you walk us through the calculation
11 and the veracity of that calculation.

12 THE WITNESS: I think it's -- part of that
13 is, you know, our focus is to continue to invest in
14 this five-state area but also specifically in the area
15 where our headquarters is.

16 So we're going to not only develop and
17 spend over a billion dollars in the state of Iowa
18 across the compression facilities and the pipeline,
19 but we are going to have our headquarters continue to
20 be located in Ames. And so those are the jobs
21 affiliated with running the company, the development
22 of the control center, with a redundant control center
23 also, and all of the maintenance and technical
24 services that are affiliated with that.

25 BOARD CHAIR HELLAND: On page 7, lines 5

1 through 7 of your direct testimony, you state the
2 Midwest lacks appropriate geological formations to
3 sequester CO2.

4 Did Summit Carbon conduct research to
5 determine if Iowa had any viable sequestration
6 locations?

7 THE WITNESS: We did. And it says "much of
8 the Midwest." I mean, there are areas depending on
9 where you draw that boundary. In Illinois, Indiana,
10 and Ohio, there are some good formations.

11 But research was done. I'm not a
12 geologist, but I do know that that was done. Not only
13 for Iowa, but also eastern Nebraska, eastern South
14 Dakota, and much of Minnesota. And so the criteria
15 for those formations is not known to exist in this
16 area.

17 And, believe me, we're not building a
18 pipeline for fun. If it was possible here, we would
19 be doing it -- we'd be doing it here.

20 BOARD CHAIR HELLAND: Has any other entity
21 examined Iowa to determine if there are sequestration
22 opportunities in Iowa?

23 THE WITNESS: So the basis for the
24 testimony that I just gave came from the EERC, which
25 is the Energy & Environmental Research Center, in

1 North Dakota and their geologists when they were
2 looking at depth of cap rock and the depth of the
3 formations. In addition to some other
4 characteristics. There have been some reports that
5 say there could be geology here, but it's unknown.

6 But specifically, from my understanding,
7 because the formations are so shallow, even if there
8 is cap rock and the salinity is high enough, which is
9 very questionable whether that exists or not and it's
10 unknown, that the very shallow depth of those
11 formations likely makes them unfit for storage of CO2
12 in a dense phase.

13 BOARD CHAIR HELLAND: Has or could Summit
14 provide those reports?

15 THE WITNESS: I believe we could get an
16 opinion from an expert on that.

17 BOARD CHAIR HELLAND: Staying on page 7, it
18 looks like lines 8 through 9, you discuss truck and
19 rail transportation.

20 Do you know an approximation of trucks or
21 rail cars that would be necessary to transport the
22 same amount of CO2 Summit's pipeline is proposed to
23 move?

24 THE WITNESS: Yeah, it is significant.
25 Trucks get maybe 20 or 22 tons of liquid CO2 as

1 opposed to a railcar that's between 60 and 65. That's
2 around 300 psi. And so the CO2 is in a liquid state
3 at that point. And we see those trucks, specifically
4 more trucks in Iowa, hauling to various industrial use
5 facilities of that.

6 But, if you do basic math on 9 1/2 million
7 tons divided by 65 tons in a railcar, it's a
8 staggering number of trains that would be required
9 even if you take into consideration that railcars are
10 making multiple trips.

11 BOARD CHAIR HELLAND: Okay. I think we can
12 do the math on that later.

13 On page 9, lines 9 through 13 of your
14 direct testimony, you describe the nature of the
15 offtake agreements. So, if you've answered this, feel
16 free to say you've already answered or refer to
17 confidential session.

18 Who owns the CO2?

19 THE WITNESS: So the ethanol plant owns the
20 CO2 until they transfer custody, and in this case
21 ownership, to Summit at the title transfer point.

22 BOARD CHAIR HELLAND: And remind us where
23 the title transfer point is?

24 MR. DUBLINSKE: Your Honor, I hate to
25 interrupt, and it's awkward to object to a Board

1 member's question, but this really should be in
2 confidential session.

3 BOARD CHAIR HELLAND: That's fine. I
4 appreciate that.

5 I'm trying to find one that's not going to
6 be in confidential session. I think it will be easier
7 to just reserve our questions for confidential
8 session.

9 BOARD MEMBER BYRNES: Mr. Pirolli, just one
10 quick question dealing with -- one of the -- I don't
11 remember who asked the question about can we sequester
12 this -- I think maybe Chair Helland asked that. If
13 you can sequester in Iowa.

14 Are you aware of the National Energy
15 Technical Laboratory? It's a DOE, Department of
16 Energy, lab.

17 THE WITNESS: NETL?

18 BOARD MEMBER BYRNES: NETL.

19 THE WITNESS: Okay. I'm familiar.

20 BOARD MEMBER BYRNES: And they have a
21 facility in Morgantown, West Virginia.

22 Has Summit reached out to them at all on
23 accessing any of their research, any of their
24 information that's been done on decarbonization and
25 decarbonization projects?

1 THE WITNESS: I've looked through some of
2 that information extensively. I don't know if a
3 conversation with NETL specifically has happened with
4 Summit and that organization since I've been here, but
5 we are generally aware of their research and the
6 things that they do.

7 I'm not the expert there, but we're -- you
8 know, as it relates to some of the emerging technology
9 and the CarbonSAFE programs, I mean, we're generally
10 aware.

11 BOARD MEMBER BYRNES: So are you aware that
12 that facility can actually do core samples for
13 viability of carbon sequestration underground?

14 THE WITNESS: That they have the
15 capability?

16 BOARD MEMBER BYRNES: Of analyzing the core
17 samples. So, if you were to take a core sample and
18 send it in to their facility, they can give you that
19 feedback on whether or not it's a viable geological
20 structure.

21 THE WITNESS: Okay.

22 BOARD MEMBER BYRNES: Who would be a good
23 person with Summit that may be --

24 THE WITNESS: Wade Boeshans in our North
25 Dakota office is our -- the management team member

1 that is focused on storage. I believe when we sent
2 core samples from the stratigraphic test wells in
3 North Dakota, those were sent to a lab in Colorado, in
4 Denver, but I'm not sure if it was NETL or not. I
5 don't think so, but I'm not sure exactly who analyzed
6 those.

7 BOARD MEMBER BYRNES: Is there anybody
8 that's going to be testifying that's more versed to
9 that?

10 MR. DUBLINSKE: The person that would be
11 most likely would be Mr. Powell. And I know that we
12 are expecting him to be back on the stand at some
13 point.

14 Because the sequestration is primarily a
15 North Dakota issue, we do not have Mr. Boeshans
16 scheduled for here, or any specific sequestration
17 witness, but Mr. Powell would probably be your best
18 bet on that.

19 BOARD MEMBER BYRNES: Thank you. I have no
20 further questions.

21 BOARD CHAIR HELLAND: Okay. The Board has
22 no further questions.

23 Mr. Dublinske.

24 MR. DUBLINSKE: Your Honor, I have no
25 redirect on the public portion of the questioning thus

1 far. So I don't know if you want to release the
2 witness and then we can talk logistics? Or otherwise
3 I can just go right into logistics.

4 BOARD CHAIR HELLAND: Let's release the
5 witness for now and then we can go into logistics.

6 THE WITNESS: Thank you.

7 BOARD CHAIR HELLAND: Thank you.

8 Okay. Logistics.

9 MR. DUBLINSKE: Your Honor, notwithstanding
10 some loose-with-the-truth comments that were made in a
11 recent pending motion, we had no special insight into
12 the schedule and we do not have, particularly our
13 non-party witnesses, at our beck and call.

14 And so, on short notice, we were not able
15 to get Mr. Phillips here today. He can be here
16 tomorrow. Mr. Broghammer is here. We can move him
17 up.

18 I would not expect -- and the other parties
19 can tell me if I'm wrong about this. I would not
20 expect Mr. Broghammer to be one of the longer
21 witnesses. Mr. Schovanec probably will be.

22 And what I would ask the Board's
23 indulgence -- what we found worked pretty well in
24 Dakota Access, because inevitably you have these gaps
25 with witnesses, is that having somebody that even if

1 they're on a couple different times that is sort of
2 always available to fill the gaps worked pretty well.

3 I would suggest Mr. Schovanec, who will be
4 here, is a good person to take as we can and fill gaps
5 with if the Board is amenable to that.

6 What I would say, however, is I think
7 Mr. Schovanec will be a fairly long witness. So it
8 may make sense to have the confidential on Pirolli
9 before we start Schovanec. Otherwise, we're going to
10 potentially start Schovanec for a limited amount of
11 time, not know exactly how long, and then have to
12 break and go into that closed session and come back.

13 I just throw that out there. I don't know
14 that there's a great answer on any of this, but we
15 will continue to try and sequence and get people in
16 town in a way that can keep the proceedings moving as
17 best as possible. Again, some leeway to have sort of
18 a designated fill-in for odd time gaps I think would
19 help with that.

20 Mr. Phillips can be here tomorrow, but he
21 is not available to be the next witness.

22 BOARD CHAIR HELLAND: Mr. Murray.

23 MR. MURRAY: I certainly appreciate the
24 thinking of Mr. Dublinske. And, yes, it is true there
25 were some scheduling modifications within the Dakota

1 Access case.

2 I think it would behoove the Board, and all
3 of us, to know as to which witnesses are those
4 witnesses that are likely to move and those witnesses
5 which will remain in the sequential order as listed.
6 Because, obviously, it does seem like we're running a
7 little bit behind here.

8 Thank you.

9 BOARD CHAIR HELLAND: Mr. Taylor, did you
10 have a comment? You nodded.

11 MR. TAYLOR: It's like an auction. You
12 don't dare nod.

13 My only comment is that we do want to
14 reserve enough time today for the confidential
15 session. And you had asked for our best guess as to
16 how long it would take. I think with the number of
17 attorneys we have, and apparently the Board has some
18 questions for Mr. Pirolli, I think we might want to
19 set aside a couple of hours.

20 BOARD CHAIR HELLAND: Mine will take about
21 ten minutes. If that. Thank you.

22 So you're saying your confidential
23 questions will take two hours?

24 MR. TAYLOR: No. No. No.

25 BOARD CHAIR HELLAND: Mr. Whipple.

1 MR. WHIPPLE: I certainly agree with
2 Mr. Dublinske that Mr. Schovanec is likely to take
3 more time than Mr. Broghammer. And so the Counties
4 agree that moving into closed session for Mr. Pirolli
5 and then coming out to begin Mr. Broghammer might be a
6 good way to proceed today.

7 BOARD CHAIR HELLAND: Mr. Williams?

8 MR. WILLIAMS: I would just simply concur
9 and would agree that Mr. Pirolli would probably be the
10 best to go next, confidential session. Mr. Jorde -- I
11 was talking to him before this question came up. He
12 thinks he would probably take about an hour with
13 Mr. Pirolli in confidential.

14 BOARD CHAIR HELLAND: Thank you.
15 Appreciate that.

16 Any other input?

17 (No response.)

18 BOARD CHAIR HELLAND: All right. Let's go
19 to lunch until 1:00. I want to discuss with the rest
20 of the Board. So we will plan on -- hold on real
21 quick.

22 (Brief pause.)

23 BOARD CHAIR HELLAND: We'll settle this as
24 soon as we get back from lunch. I just want to visit
25 with the other Board members real quick. When we get

1 back from lunch, we will start with Mr. Broghammer.

2 So we will go off the record until 1:00.

3 MR. DUBLINSKE: I'm sorry. Did you say at
4 1:00 we would go to Broghammer next?

5 BOARD CHAIR HELLAND: Yes.

6 MR. DUBLINSKE: Thank you.

7 (Recess taken at 11:45 a.m.)

8 (Hearing resumed at 1:00 p.m.)

9 BOARD CHAIR HELLAND: Good afternoon. It's
10 1:00. We'll go back on the record.

11 Our current plan is to call Mr. Broghammer
12 under the anticipation that that won't take terribly
13 long. If we're wrong about that, we'll have to
14 reevaluate. If we have time, we will call
15 Schovanec -- am I saying that correctly?

16 MR. DUBLINSKE: Schovanec.

17 BOARD CHAIR HELLAND: But we're going to
18 start with Mr. Broghammer and then we'll try to leave
19 enough time in the late afternoon to go back into
20 closed session for Mr. Pirolli.

21 So with that -- Mr. Taylor, did you have
22 something?

23 MR. TAYLOR: No, I'm just waiting for
24 Mr. Broghammer.

25 BOARD CHAIR HELLAND: He's first in line.

1 Let's bring Mr. Broghammer up, please.

2 MR. DUBLINSKE: Thank you, Your Honor. As
3 its next witness, Summit calls James Broghammer.

4 MR. BROGHAMMER: Good morning -- good
5 afternoon now.

6 BOARD CHAIR HELLAND: Thank you. Go ahead
7 and raise your right hand.

8 JAMES BROGHAMMER,
9 called as a witness by Summit Carbon Solutions, LLC,
10 being first duly sworn by Board Chair Helland, was
11 examined and testified as follows:

12 BOARD CHAIR HELLAND: Mr. Dublinske.

13 MR. DUBLINSKE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. DUBLINSKE:

16 Q. Mr. Broghammer, are you the same James
17 Broghammer that caused to be filed in this matter
18 direct prefiled testimony?

19 A. I am.

20 Q. Do you have any corrections to your
21 testimony before we begin today?

22 A. No.

23 Q. And, if I asked you the questions in your
24 testimony on the stand today, would your answers be
25 substantially the same?

1 A. Yes.

2 MR. DUBLINSKE: Your Honor, we move the
3 admission of the direct testimony of James Broghammer.

4 BOARD CHAIR HELLAND: Are there objections?
5 (No response.)

6 BOARD CHAIR HELLAND: Seeing none, the
7 testimony of Mr. Broghammer will be admitted.

8 MR. DUBLINSKE: We tender the witness for
9 cross-examination.

10 BOARD CHAIR HELLAND: Mr. Taylor.

11 MR. TAYLOR: Thank you.

12 CROSS-EXAMINATION

13 BY MR. TAYLOR:

14 Q. Mr. Broghammer, I'm Wally Taylor. I
15 represent the Sierra Club. I think you and I met back
16 on June 22nd at your deposition.

17 Do you remember that?

18 A. I remember meeting with you, yes. I don't
19 remember the exact day.

20 Q. I didn't either, I had to look at the cover
21 page of the transcript.

22 Just some brief background. You're the CEO
23 of Pine Lake Corn Processors?

24 A. That's correct.

25 Q. And that's an ethanol plant.

1 A. Correct.

2 Q. And your facility has signed what are
3 called offtake agreements -- or an offtake agreement
4 with Summit Carbon Solutions?

5 A. Yes.

6 Q. Perhaps I was correct first using the
7 plural. Because you signed an original one and then
8 an amended one; is that correct?

9 A. Yes. There is an amended one.

10 Q. That initial -- and let me paraphrase or
11 state that we don't want to talk about the particulars
12 or the terms of any of those agreements. We're just
13 talking in general terms and kind of at a high level.

14 Okay?

15 A. Okay.

16 Q. Because the actual terms are subject to a
17 confidentiality order. So we don't want to have those
18 discussed in open session.

19 A. Yes.

20 Q. So that initial agreement, who did you
21 negotiate with and who did you sign the agreement
22 with?

23 A. Well, Summit Carbon Solutions' team. I
24 don't remember everyone in the room. Jon, Bruce,
25 others.

1 Q. We've had testimony that when those initial
2 agreements like yours were signed, that Summit Carbon
3 Solutions had not been formed yet. That it was
4 Summit Ag Group.

5 Does that sound correct?

6 A. I don't know that.

7 Q. So who were these people you were talking
8 about?

9 A. Well, there was several people in the room,
10 but I remember Jon Probst, I'm not sure I'm saying
11 that right, was in the room. Bruce was in the initial
12 presentation.

13 Q. Bruce?

14 A. Rastetter.

15 Q. Anybody else that you can remember?

16 A. I can't remember.

17 Q. And what encouraged you, at that point, to
18 sign up with Summit?

19 A. Well, the motivating factor for a producing
20 plant is the CI. I mean, even back then three years
21 ago, carbon intensity -- for those that don't know
22 what CI is, carbon intensity score.

23 Our industry has witnessed year after year
24 after year more payout, more focus, and more
25 insistence on a CI score that's lower and lower. So

1 that was the most attractive part of this.

2 Q. Would an ethanol plant, in your experience,
3 want to sign an agreement with Summit Carbon Solutions
4 if it was a very short-term commitment?

5 A. You're asking me I would want to sign a
6 short-term?

7 Q. Would any ethanol plant want to do that?

8 A. I can't speak for other ethanol plants. I
9 can speak for myself. And, just so you remember, I
10 told you this before, I was actually the CEO of two
11 ethanol plants at that time.

12 And, from my perspective, signing something
13 for a short period of time was not strategic. I was
14 looking for something in multiple years minimum.

15 Q. Why?

16 A. Because I didn't want to have to go back
17 and try and raise more capital, more permits, more
18 things. I wanted the solution to help us with the CI
19 long term.

20 Q. And we've heard testimony that with the
21 current contracts that Summit has, that Summit owns
22 the carbon capture equipment.

23 Is that true in your case as well?

24 A. Yes.

25 Q. And was that an incentive that they were

1 picking up that capital cost rather than you having to
2 do that?

3 A. Most certainly.

4 Q. So would you expect that an ethanol plant
5 would want to sign a contract where the ethanol plant
6 would agree to pay for that carbon capture equipment?

7 A. Try again with it. Try it one more time.

8 Q. Sure. Would you expect that an ethanol
9 plant would want to sign a contract with Summit where
10 the ethanol plant paid the cost of the carbon capture
11 equipment?

12 A. I can't speak for other people. I know it
13 was attractive for us when we looked at it to -- they
14 were covering the cost. Of course they were taking
15 the 45Q. But, no, for us, it was good. It was a good
16 decision.

17 Q. Have you talked to any other ethanol plants
18 that maybe haven't signed with any of the pipeline
19 companies or any other industries that might be
20 thinking about capturing carbon and putting it on a
21 pipeline?

22 A. Well, yes, I talk to other people in the
23 industry all the time. Yes, I do.

24 Q. And have any of them expressed an interest
25 in a very short-term contract like I was discussing

1 with you earlier?

2 A. No. Most of them I'm talking to are, "How
3 do I get on the pipeline?"

4 Q. And the same kind of contract you have.

5 A. We don't get into specifics when I talk to
6 them. I don't -- "Will you do two, five, ten" -- we
7 don't get into that discussion. That's actually --
8 yeah. It's a little too far.

9 Q. As I recall from your deposition, the
10 boiler and other power needs of your ethanol plant are
11 powered by natural gas?

12 A. Yes.

13 Q. Have you given any thought to capturing the
14 CO2 from the natural gas?

15 A. As it's burned in the boilers and the
16 turbine?

17 Q. Yes.

18 A. Yes. Very much.

19 Q. Why haven't you done that?

20 A. Time. Just give us more time and we'll
21 probably get to that.

22 Q. And is it much more difficult to capture
23 the carbon dioxide and be able to put it on the pipe
24 in a fairly pure form that Summit would accept on
25 their pipeline?

1 A. That's correct. You're right in that the
2 CO2 concentration is not nearly as high. So you have
3 to come up with a way to purify that. And that's
4 still under development, still under economic
5 evaluation.

6 Q. But that's not something that's in the very
7 near future, I take it.

8 A. Oh, I think it will be done in less than
9 five years. I mean, I don't know for certain, but
10 that's my opinion.

11 Q. Why do you think that?

12 A. Because there's several big companies -- I
13 talked to Caterpillar. They're doing a big project on
14 that. Trying to sequester CO2. Mitsubishi has a
15 project out there. There's others, which I probably
16 shouldn't talk about, because I signed a
17 confidentiality agreement.

18 But, yeah, there's big money trying to
19 figure out how to capture from internal combustion,
20 burning of natural gas, or anything frankly, to get
21 that CO2.

22 Q. That's what it's all about. The money.

23 A. And the technology.

24 Q. Am I correct that you're on the board of
25 the Iowa Renewable Fuels Association?

1 A. I am.

2 MR. TAYLOR: Can we get Pirolli Exhibit 1,
3 Rebuttal Exhibit 1, up on the screen?

4 There we go.

5 BY MR. TAYLOR:

6 Q. Does that look familiar to you?

7 A. No.

8 Q. Okay.

9 A. Just so you understand, to be a board
10 member on the Iowa Renewable Fuels Association, all
11 you have to do is pay the dues.

12 Q. Okay.

13 A. That doesn't mean I attend the meetings.

14 Q. Well, I'll represent to you, from prior
15 testimony, that this is a study that was done for the
16 Iowa Renewable Fuels Association back in February of
17 this year.

18 You don't know anything about the
19 association requesting that study or anything?

20 A. No, I knew they -- I do know they requested
21 for it, yes.

22 Q. Okay. Do you know why it was requested?

23 A. I think to help out the people that were
24 looking to build -- or actually capture and sequester
25 CO2. They were just trying to help the industry out.

1 Q. So it was because of the proposed
2 pipelines; correct?

3 A. Correct. Yeah.

4 MR. TAYLOR: Thank you. That's all the
5 questions I have.

6 BOARD CHAIR HELLAND: Thank you.

7 Mr. Whipple.

8 MR. WHIPPLE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. WHIPPLE:

11 Q. Mr. Broghammer, I just have a few questions
12 for you.

13 Other than partnering with Summit, does
14 your company have other ways to reduce carbon
15 intensity?

16 A. Yes. We are pursuing -- I don't know if
17 you're familiar with the combined heat and power.
18 Where you actually take natural gas into a turbine,
19 turn a big shaft, basically a jet engine, make
20 electricity, take the waste heat of that and make
21 steam. So it's called combined heat and power. So
22 you make the power, electricity, and you get heat.
23 Very, very efficient process. It's going to lower our
24 CI.

25 We're also capturing some heat off of our

1 exhaust coming off the dryers. There's an exhaust of
2 water vapor there. And we're going to recover some
3 heat from that.

4 And then we are reconfiguring both
5 distillations. We have two. We're working on that.

6 So, yeah, we're doing a lot of stuff just
7 besides this.

8 Q. And do you also have other markets for the
9 carbon if you wanted to explore those? Other uses for
10 the carbon that's a by-product of your ethanol?

11 A. We don't have any other use right there.
12 There's none that I know of.

13 Q. Well, you're not pursuing any now, but
14 would you be able to convert it to dry ice, for
15 example?

16 A. Yes, you could. And several ethanol plants
17 do have dry ice facilities.

18 Q. And are you aware of these other
19 organizations out there like CapCO2 and other
20 projects?

21 A. Yes, I have read the advertisement for
22 CapCO2. It's a bit of an advertisement. It lacks no
23 capital requirements, no operating cost, no yields.
24 And, most importantly, it has no sensitivity analysis.
25 So what happens when you bring that many more millions

1 of gallons of ethanol onto the market.

2 So it's a very concerning project for me.

3 Very concerning.

4 Q. Does your company intend to utilize the 45Z
5 tax credits?

6 A. We will use what is the best. And
7 certainly, if you do the math, 45Z will be the best in
8 '25, '26, '27. So, today, I'm saying yes.

9 MR. WHIPPLE: That's all the questions I
10 have, Your Honor.

11 BOARD CHAIR HELLAND: Thank you.

12 Mr. Meyers. Farm Bureau Meyers.

13 And then you're next, Mr. Meyer.

14 MR. MEYERS: Thank you, Chairperson.

15 CROSS-EXAMINATION

16 BY MR. MEYERS:

17 Q. Mr. Broghammer, I'm David Meyers. I'm to
18 your right.

19 My name is David Meyers. I'm an attorney
20 representing the Iowa Farm Bureau. I have a few
21 questions for you.

22 I know we just picked up on the 45Z. And
23 I'm going to ask some high-level questions. I don't
24 want to get into too many specifics of your offtake
25 agreement.

1 MR. MEYERS: Can we please pull up
2 Mr. Broghammer's testimony, page 3.

3 BOARD CHAIR HELLAND: Mr. Broghammer, you
4 can move that mic around wherever you'd like to be
5 comfortable.

6 THE WITNESS: I've got to look here.

7 BOARD CHAIR HELLAND: Whatever you need.

8 BY MR. MEYERS:

9 Q. And you'll see on line 3 you talk about
10 Pine Lake will receive a benefit of 60 cents per
11 gallon for Summit's project; correct?

12 A. Correct. That's the 30 points times
13 2 cents.

14 Q. And that's based on what Pine Lake would
15 receive from the 45Z tax credit; correct?

16 A. Yes.

17 Q. And will Pine Lake receive 100 percent of
18 the 45Z tax credit?

19 MR. DUBLINSKE: Objection.

20 BOARD CHAIR HELLAND: State your objection.

21 MR. DUBLINSKE: The details of the split is
22 subject to the confidential offtake agreements. And
23 so we can only talk about that in the closed session.

24 MR. MEYERS: That's fine.

25

1 BY MR. MEYERS:

2 Q. Are there any other types of revenue
3 streams that Pine Lake could receive from Summit
4 Carbon's capture sequestration project?

5 A. Well, as I stated earlier, whenever you
6 lower the CI, you know, there's a possibility of
7 getting paid more for your lower CI fuel. Ethanol.

8 Q. Will Pine Lake have to pay a portion of the
9 operating costs associated with the proposed project
10 with Summit?

11 MR. DUBLINSKE: I'm sorry. Could I have
12 that question repeated?

13 MR. MEYERS: Will Pine Lake have to pay a
14 portion of the operating costs. Just high level. I'm
15 not trying to get into specifics of dollar amounts or
16 percentages.

17 MR. DUBLINSKE: At a high level, I think we
18 can talk about that publicly.

19 A. Yes.

20 BY MR. MEYERS:

21 Q. And are you aware that Mr. Pirolli has
22 testified that participating ethanol plants will earn,
23 on a net basis, an additional 10 to 35 cents per
24 gallon?

25 A. Yes.

1 Q. And do you think that's a more accurate
2 representation of what Pine Lake will receive?

3 THE WITNESS: Again, are we getting too
4 detailed here? Do we need to wait?

5 MR. DUBLINSKE: To the extent the question
6 is just do you think Mr. Pirolli's 10 to 35 is more
7 accurate than your 60, I think you can answer that.

8 A. Yes, it's more accurate.

9 BY MR. MEYERS:

10 Q. Can you just explain why there are so many
11 ethanol plants in Iowa?

12 A. Well, it's the corn supply. And it's a
13 good corn supply.

14 Q. Would it also be because of the established
15 infrastructure to sell ethanol?

16 A. I don't see that.

17 Q. Would it also be because of the established
18 infrastructure for selling to gas stations?

19 A. Not particularly.

20 Q. Would it be because of the state policy
21 related to ethanol production and sales?

22 A. Yes, it's a very supportive policy in the
23 state of Iowa.

24 Q. And would it also be because of the number
25 of livestock creating demand for ethanol by-products

1 such as DDGS?

2 A. Yes, that helps.

3 Q. And I will ask that we pull back up your
4 testimony. Page 3, line 19. And I'll give you a
5 second to read.

6 A. Okay.

7 Q. So you know -- when asked "What would be
8 the implications to the ethanol industry in Iowa if
9 the SCS MCE project is not able to be completed," one
10 of the implications you noted is "ethanol plants will
11 be unable to compete and will be gone as fast as it
12 takes to expand ethanol production in other states."

13 Correct?

14 A. Yes, that's what I state.

15 Q. And was your statement based on the Iowa
16 Renewable Fuels Association paper?

17 A. No.

18 Q. What was that based on?

19 A. Well, it's the simple math that I point out
20 here. An ethanol plant that has carbon sequestration
21 is going to garner the 60 cents per gallon. You get
22 roughly 3 gallons per bushel. So you're up to \$1.80.
23 And basis across the state of Iowa, 50 cents will take
24 corn a long ways. It will leave Iowa.

25 Q. And does your statement assume that other

1 states and counties will approve the CCS project
2 pipeline?

3 A. Somewhere. Whether it's North Dakota,
4 South Dakota. Some of the plants in Illinois are
5 going to do direct. Yeah, somewhere.

6 Q. And does your statement assume ethanol
7 plants won't qualify for the 45Z tax credit without
8 the proposed pipeline project?

9 A. Now, remember 45Z kicks in at a CI score of
10 50. So will some plants get under the 50? Yeah, we
11 hope to get under the 50 with our current improvement
12 projects. So some will get down there. And, if you
13 happen to be in Nebraska where you have a lot of
14 cattle, you know, to drive the feed, they will
15 definitely be under 50.

16 So, no, there will still -- some will reach
17 the Z. Some will.

18 Q. And does your statement assume that federal
19 tax credits will continue past their sunset date?

20 A. Okay. There's 45Z. Which is three years.
21 And then 45Q. Which is -- help me out, maybe a dozen
22 years or ten years.

23 Q. Twelve years, yes.

24 A. Yeah. No, my assumptions don't go past
25 that.

1 Q. And would/will Pine Lake move its
2 operations to another state if the pipeline is not
3 granted?

4 A. I have no idea.

5 Q. Sticking with your same statement about
6 ethanol plants moving out of the state of Iowa, were
7 there any other factors you considered other than
8 Summit's proposed pipeline project in making that
9 statement?

10 A. No, I made the statement based on the
11 pipeline. That's how I came to all of this.

12 Q. And did you focus on any factors that might
13 weigh against moving ethanol plants out of the state?

14 A. No, I was just simply using simple math.

15 Q. And, again, I just want to confirm, your
16 statement about ethanol plants moving out of the state
17 was solely based on Summit's proposed pipeline
18 project; correct?

19 A. That's how I based this logic.

20 Q. And can you just please indicate what a
21 basis is as it relates to the price of corn?

22 A. That's a great question. So those of us
23 that buy corn daily, we buy against -- we trade
24 against the Chicago Board of Trade.

25 Any plant that buys corn -- or elevator

1 or -- anything that buys corn, you post a price for
2 corn and it will state a reference month on the
3 Chicago Board of Trade. And then it will be plus
4 60 cents a bushel, minus 30 cents a bushel. It does
5 have a wide variety.

6 For those that have lived in Iowa, you know
7 it can be as high as two or three bucks and as low as
8 a dollar.

9 So the basis is really the price you're
10 posting against the reference month on the Chicago
11 Board of Trade.

12 Q. And then I want to go to page 4 of your
13 testimony, please. So you'll see there on line 4 you
14 state "I would expect Iowa farm producers will see a
15 50 cents to \$1.00 per bushel lower corn basis which
16 correlates directly to the cost of transporting the
17 corn to an ethanol plant that sequesters CO2."

18 Correct?

19 A. That is correct.

20 Q. And did you consult any study or expert
21 when coming up with this number?

22 A. I looked at the basis posted that day in
23 Fort Dodge, Iowa, and -- I can't remember the town.
24 Somewhere in eastern Iowa. I just looked at the basis
25 that day.

1 Q. And so you just came up with those numbers
2 on your own?

3 A. It was, like, 80 cents that day. So I used
4 the range of 50 to \$1.00.

5 Q. And, just to confirm, you came up with
6 those numbers on your own?

7 A. Yes.

8 Q. Would it surprise you to know that the Iowa
9 Renewable Fuels Association paper under its kind of
10 scenario 4 only notes an expected -- the price levels
11 would only be expected to be weakened by 35 cents per
12 bushel to cover the costs associated?

13 A. Well, I think they're low.

14 Q. Is Pine Lake paid per bushel of ethanol or
15 per gallon for their ethanol?

16 A. We're paid per gallon.

17 Q. If you are paid per gallon, how is the
18 \$1.80 per bushel relevant to the total benefit of the
19 proposed pipeline for Pine Lake?

20 A. Yeah, so I took the -- great question. So
21 I've taken the 30 points of reduction times 2 cents.
22 And then roughly 3 gallons of ethanol per bushel. So
23 real simple math.

24 Q. Farmers will not receive \$1.80 per bushel
25 increase in price; correct?

1 A. No.

2 Q. If the Summit pipeline project was granted
3 and put into service, how much will Pine Lake pay
4 farmers for corn?

5 A. It's always based on what the market will
6 bring. So I can't answer that. It's hard to tell
7 that now in the future.

8 Q. As you sit here today -- excuse me. Strike
9 that.

10 So you don't know whether farmers will be
11 paid more for their corn as a result of Summit's
12 proposed pipeline project; correct?

13 A. No, what I can say is someone that does
14 have a pipeline is going to have an economic value and
15 will invest more values and will create more demand
16 for corn and, therefore, raise the price of corn
17 relative to others. But I can't say the price. I
18 can't say it's going to be "this."

19 MR. MEYERS: Thank you. Those are all the
20 questions I have.

21 BOARD CHAIR HELLAND: Thank you,
22 Mr. Meyers.

23 Mr. Meyer.

24

25

1 CROSS-EXAMINATION

2 BY MR. MEYER:

3 Q. Good afternoon, sir. I'm over here. I
4 represent the Hardin County supervisors.

5 Is the takeaway from your direct testimony,
6 and your testimony today, that without at least the
7 Summit proposed pipeline, in connection with all of
8 these other potential pipelines, that the ethanol
9 industry would be unsustainable without it?

10 A. We would be unsustainable against those
11 that do have it.

12 Q. If other lines are permitted and this line
13 is not?

14 A. (Moving head up and down.)

15 Q. You're nodding your head. Is that correct?

16 A. Yes, that's correct. Sorry.

17 Q. You've got an MBA in business and you've
18 been in farming and owned ground and rented ground for
19 years. Safe to say that when there's incentive to
20 grow corn, people grow more corn?

21 A. I believe so, yes. Always.

22 Q. And then what's the correlating response to
23 that in the market?

24 A. Prices go down. Supply and demand.

25 Q. Suppression of prices; right?

1 A. Yeah.

2 Q. So, if we create this bit of a flare, a
3 farmer may enjoy it for a short while until the next
4 crop rotation and more rows of corn are planted and
5 then the price is coming down.

6 So it's a flare for the grower; correct?

7 A. There's certainly ebbs and flows. But what
8 we can say, and I believe this and have experienced
9 this myself, pre the ethanol industry we had the
10 posted county price, the loan deficiency payments,
11 the -- you know, just general support from the federal
12 government for anybody raising corn.

13 And, today, we sustain a much higher level
14 in the profitability. And I know that because I own
15 farmland. I have two brothers that farm.

16 So I know what ethanol has done for the
17 farmers personally.

18 Q. From your direct testimony, it looks like
19 you've been a grower or had land, either you were
20 renting it out or renting it to grow, since the late
21 '70s.

22 So you were around during the farm crisis
23 of the '80s; correct?

24 A. I was.

25 Q. Would you agree that that farm crisis was

1 fueled, in large part, by public policy that created a
2 bubble that burst and crushed small operators? Or
3 overextended operators?

4 A. I was a little young then. Still in high
5 school. I'm going to say I don't know. I'm going to
6 say that I don't know. I wish my dad was still alive.
7 I would ask him what he felt caused the 1980 farm
8 crisis.

9 But it did bankrupt -- many, many people I
10 knew went out of farming in the 1980s from the bubble
11 or whatever you want to call it.

12 I'm not qualified to say -- I just don't
13 know.

14 Q. I mean, didn't they incentivize growing
15 corn to feed the world? And then a change in policy
16 crushed farmers?

17 A. I'm going to say I definitely don't know
18 this. I don't know for sure.

19 I know there was a farm crisis. I know it
20 was terrible for my dad. I know -- but if you're
21 going to ask me what the real reason was, I'm not the
22 guy to ask. I don't know. I just know there was a
23 farm crisis.

24 MR. MEYER: I don't have any other
25 questions. Thank you.

1 BOARD CHAIR HELLAND: Thank you.

2 Mr. Jorde.

3 MR. JORDE: Yes. Thank you. I would offer
4 Exhibit 552, the witness's deposition, if that hasn't
5 been done already.

6 BOARD CHAIR HELLAND: That was my follow-up
7 question. Thank you.

8 Are there any objections?

9 (No response.)

10 BOARD CHAIR HELLAND: Seeing none, it will
11 be admitted as Broghammer Deposition.

12 MR. JORDE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. JORDE:

15 Q. Your entity is a cooperative; is that
16 right?

17 A. Pine Lake Corn Processors is an LLC wholly
18 owned by Innovative Ag Service. A cooperative.

19 Q. So it's not farmer owned in the traditional
20 sense of what we might think of a co-op; correct?

21 A. It's owned by a co-op. We're owned by a
22 co-op.

23 Q. So the entity you mentioned you're saying
24 is a co-op. Is it of local farmers? Or who are the
25 owners of that co-op?

1 A. I'll say it one more time. Pine Lake Corn
2 Processors is a limited liability partnership -- yeah,
3 it's a PLCP, LLP. And that entity is owned entirely
4 by Innovative Ag Service, which is a co-op here in
5 Iowa. One of the larger co-ops in Iowa.

6 Q. And is that a co-op farmer owned? Is that
7 what you would say?

8 A. I don't think "farmer" is the right word to
9 use. Producer. Anybody that utilizes the services of
10 the co-op has a share; right?

11 Q. And have you promised to pass on to any
12 farmers or producers that sell you corn -- or will do
13 in the future, to pass on 100 percent of any bump or
14 increased profits you would receive?

15 A. No.

16 Q. And have you sent out a newsletter or any
17 formal indication to any of your owners that you will
18 no longer be a going concern or face bankruptcy or
19 material risk to be a going-forward concern should
20 Summit Carbon Solutions' pipeline application be
21 denied?

22 A. I have not.

23 Q. Do you forward contract corn supply?

24 A. I think we have about 20 days bought. So a
25 little bit. Sometimes it gets a little more.

1 Q. And, for any contracts that you have,
2 assuming, or if, this were to go through, would you be
3 willing to renegotiate those to pay more for corn of
4 the contracts you've already secured?

5 A. No.

6 MR. JORDE: All right. I think that's it.
7 Thank you.

8 BOARD CHAIR HELLAND: Thank you. I don't
9 see any other questions from the parties.

10 The Board has one very, very brief
11 question.

12 On page 3, line 21 and 22. There we are.
13 Can you clarify for the Board. When you say
14 "\$1.5 billion bushels of corn," is that \$1.5 billion
15 worth of corn or \$1.5 billion? Can you just clarify
16 what that means.

17 THE WITNESS: I'm sorry. The dollar sign
18 should not -- it should be 1.5 billion. Two and a
19 half billion raised, 60 percent goes to ethanol, the
20 ethanol industry leaves Iowa, 1.5. That was a typo
21 there.

22 BOARD CHAIR HELLAND: Do you have a
23 question? Go ahead.

24 BOARD MEMBER BYRNES: Just quickly here.
25 Over the last two weeks, I've heard CapCO2 mentioned

1 multiple times. Many landowners have, while they were
2 in your same seat, brought up CapCO2. I had not heard
3 of CapCO2 prior to this. So I'm trying to learn more
4 about this since it's become part of the record.

5 So you had a question just a little bit ago
6 about CapCO2. What do you know about CapCO2?

7 THE WITNESS: So they have the very first
8 plant, which tells you it's a bit of an R & D effort,
9 being built in Atkins Energy, I believe. Methanol
10 will be the product they make.

11 So here's what I don't know. I said this a
12 little earlier. I don't know the capital cost. I
13 don't know the operating cost. I don't know the
14 yields. I don't know -- most importantly, I don't
15 know what happens when you bring that much more
16 methanol into a market that's this big, and defined
17 this (indicating) big, what happens when you bring
18 another 2, 5, 10, 20 million gallons of methanol into
19 that market. That's called a sensitivity analysis.
20 And you just don't know this.

21 And so this is a bit of an R & D effort
22 here. Actually, it's a big R & D effort.

23 BOARD CHAIR HELLAND: Sorry,
24 Mr. Broghammer. When you said "this big," you made a
25 hand gesture. Do you mean big, large, small --

1 THE WITNESS: It's a defined market right
2 now. Methanol is a defined market. You know, I think
3 it's used in pharmaceuticals and a lot of
4 specialty-type markets. And it's this big. It's as
5 big as it is.

6 So I'm not exactly -- see, that's one of
7 the things I don't know. They don't tell you how big
8 it is. And I'd like to know that. Is it 10 million
9 gallons or is it 10 billion? It's not 10 billion, I
10 know that, but I don't know the size.

11 So when I talk about sensitivity
12 analysis -- so let's say the whole market today is
13 10 million gallons. And just one plant, like Pine
14 Lake, makes 20 million gallons. What do you think
15 that market is going to do? The margins will crater
16 and there'll be no margins.

17 I mean, so there's no sensitivity analysis
18 I've seen in that business proposal. It reminds me a
19 lot of the early thought process of switchgrass to
20 cellulosic ethanol. You know, lots of promises and
21 nothing delivered here.

22 So I'm very concerned about this. I don't
23 see the technology and I don't see the economics.
24 And, yes, I have an engineering degree. And, yes, I
25 have a business degree. So I'm very concerned about

1 it.

2 I'm not here to say it's not going to work.
3 I'm just saying there is a thousand questions to be
4 answered yet.

5 BOARD MEMBER BYRNES: So you said methanol
6 is the end product.

7 THE WITNESS: That's what I'm reading in
8 the advertisement.

9 BOARD MEMBER BYRNES: And you said you're
10 an engineer. And I don't know if chemical engineer,
11 mechanical, whichever.

12 So, in terms of methanol as a final
13 product, what's methanol? Is it toxic?

14 THE WITNESS: No, I don't believe so. No.

15 BOARD MEMBER BYRNES: Is it flammable?

16 THE WITNESS: Yes.

17 BOARD MEMBER BYRNES: Is it used in
18 applications where it's a fuel source?

19 THE WITNESS: I don't know of one. But I
20 don't know that market. I'll say that.

21 BOARD MEMBER BYRNES: So if -- and, again,
22 I'm trying to learn more about CapCO2.

23 I'm taking it that this may be something
24 that's put at the ethanol site potentially and
25 converting the CO2 to this methanol product.

1 Would a pipeline have to be built to
2 transport the methanol?

3 THE WITNESS: I know of methanol being
4 transported by railcars. I do know that. Only
5 because an empty methanol car, one, showed up at the
6 ethanol plant one day. I said, "What's this," called
7 all the appropriate people, and the car got shipped
8 back to the wrong plant. So I do know it ships in
9 cars. Railcars.

10 But that's the only reason I happen to know
11 that because an empty one showed up at my doorstep.

12 BOARD MEMBER BYRNES: So a methanol railcar
13 cannot be used to haul ethanol.

14 THE WITNESS: No, you should not mix those.

15 BOARD MEMBER BYRNES: Gotcha. Anything
16 else you can add about this technology that I know
17 nothing about?

18 THE WITNESS: No. I can't answer any more.

19 BOARD MEMBER BYRNES: Thank you.

20 BOARD CHAIR HELLAND: Mr. Dublinske.

21 MR. DUBLINSKE: Thank you, Your Honor.

22 Just one quick clarifying question on redirect.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. DUBLINSKE:

3 Q. Mr. Broghammer, do you recall a
4 conversation you had with the attorney from Farm
5 Bureau about -- your testimony talking about a
6 60-cent-per-gallon --

7 A. Right.

8 Q. -- benefit? Is that a gross figure?

9 A. Yes.

10 MR. DUBLINSKE: That's all I have, Your
11 Honor.

12 THE WITNESS: Yes. That's a gross, yes.

13 BOARD CHAIR HELLAND: Thank you.

14 Mr. Meyers, do you anticipate needing
15 Mr. Broghammer for confidential?

16 MR. MEYERS: No, I do not.

17 BOARD CHAIR HELLAND: Okay. Thank you.

18 Mr. Broghammer, you're --

19 THE WITNESS: Will I need to stay for
20 confidential or am I --

21 BOARD CHAIR HELLAND: It doesn't look like
22 it. You're excused.

23 THE WITNESS: Thank you.

24 BOARD CHAIR HELLAND: Mr. Dublinske.

25 MR. DUBLINSKE: Your Honor, if it is the

1 Board's preference to keep going outside of
2 confidential session, our next witness would be Erik
3 Schovanec. I see him coming in the back.

4 BOARD CHAIR HELLAND: Schovanec; correct?

5 MR. SCHOVANEC: Yes, sir. That's correct.

6 BOARD CHAIR HELLAND: Thank you. Please
7 raise your right hand.

8 ERIK SCHOVANEC,
9 called as a witness by Summit Carbon Solutions, LLC,
10 being first duly sworn by Board Chair Helland, was
11 examined and testified as follows:

12 BOARD CHAIR HELLAND: Mr. Dublinske.

13 Or Mr. Leonard.

14 Whomever.

15 MR. LEONARD: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. LEONARD:

18 Q. Mr. Schovanec, are you the same Erik
19 Schovanec who caused to be filed in this proceeding
20 prefiled direct testimony, petition staff report
21 testimony, rebuttal testimony, and three exhibits
22 thereto?

23 A. I am.

24 Q. If I asked you those same questions here
25 today, would your answers be substantially the same?

1 A. Yes.

2 Q. Do you have any corrections or
3 modifications to make to that testimony and exhibits?

4 A. I do not.

5 MR. LEONARD: Your Honor, I would move for
6 the admission of Mr. Schovanec's direct testimony,
7 petition staff report testimony, rebuttal testimony,
8 and the three exhibits to that rebuttal testimony.

9 BOARD CHAIR HELLAND: Are there objections?

10 MR. JORDE: I will just object to
11 foundation and hearsay to the exhibits.

12 BOARD CHAIR HELLAND: Thank you.

13 The exhibits will be admitted.

14 Proceed.

15 MR. LEONARD: In that event, Your Honor,
16 I'll tender the witness for cross.

17 BOARD CHAIR HELLAND: Thank you.

18 I'm not sure if your placards are already
19 up.

20 So, Mr. Long, go ahead.

21 CROSS-EXAMINATION

22 BY MR. LONG:

23 Q. Mr. Schovanec, good afternoon. I'm John
24 Long, an attorney with the Office of Consumer
25 Advocate.

1 Will you be responsible for setting company
2 policies and giving instruction to construction crews
3 regarding stoppage in wet conditions?

4 A. I will.

5 Q. Is it your understanding that the county
6 inspector appointed by the Counties has sole authority
7 to halt construction if he or she determines that the
8 wet conditions are present?

9 A. I think the Board rules give some guidance
10 around what defines wet conditions. You know, it's
11 not entirely prescriptive. My expectation would be
12 that we would consult with the county inspectors ahead
13 of construction, have coordination meetings, and
14 clearly define and understand what constitutes wet
15 conditions.

16 I know that we've got recommendations on
17 what that may look like based on consultations with
18 our certified professional soil scientists and other
19 inspectors that have performed this work on projects
20 in Iowa previously.

21 So I guess I would say that I don't believe
22 that the county inspectors have sole authority there,
23 that it's more of a collaborative effort and following
24 the Board rules and the AIMP.

25 Q. So is it your understanding, based on the

1 Board rules, that the county inspector will be on-site
2 for construction and restoration?

3 A. Yes.

4 Q. If there is a disagreement with the county
5 inspector saying construction should halt and the
6 company's construction crew saying it should not, who
7 would have sort of the last word and authority based
8 on your view of the Board's rules?

9 A. Again, I think that, you know, we would
10 hope to hash out those terms before construction
11 starts so that everyone clearly understands when we
12 will or won't work.

13 I know that, you know, our soil scientist
14 has made recommendations on what constitutes wet
15 weather based on percentage of standing water in the
16 right-of-way and things of that nature. And those are
17 pretty prescriptive to be able to define.

18 Again, it's just getting agreement on that
19 with the Board and with the county inspectors ahead of
20 construction starting.

21 Q. Will you instruct your crews that despite
22 all those efforts to reach a consensus beforehand,
23 that -- in the moment, if the county inspector says
24 construction needs to halt, will you instruct your
25 crews to follow that instruction?

1 A. Again, if the agreed-upon criteria results
2 in us needing to shut down the work, then we will
3 certainly make sure that our contractors are not
4 working in what's been established as wet conditions.

5 MR. LONG: Thank you. Those are my
6 questions.

7 BOARD CHAIR HELLAND: No more questions,
8 Mr. Long?

9 MR. LONG: No more questions.

10 BOARD CHAIR HELLAND: Mr. Whipple.

11 CROSS-EXAMINATION

12 BY MR. WHIPPLE:

13 Q. Mr. Schovanec, we've met. I represent
14 seven counties in this proceeding. I want to ask a
15 few more questions along the same lines that Mr. Long
16 asked you about wet conditions and county inspectors
17 to start.

18 You've reviewed the testimony of Counties
19 witness Kruizenga?

20 A. I have.

21 Q. And you're aware, aren't you, that, as a
22 county inspector, Mr. Kruizenga would prefer more
23 clarity on wet conditions?

24 A. Yes, I'm aware of that.

25 Q. And you're aware that Mr. Kruizenga doesn't

1 feel that under the current rules there's enough
2 authority provided to county inspectors to halt
3 construction?

4 A. My understanding, that is his opinion, yes.

5 Q. And he's the county inspector; right?

6 A. He is, I believe, representing ISG who is
7 representing a number of different counties. So he
8 will be representing, I believe managing, some of the
9 individual county inspectors for certain counties.

10 Q. Wouldn't you agree it would be good to have
11 really clear rules on when construction could stop?

12 A. I mean, I believe that it would be good to
13 have established criteria. I don't think necessarily
14 that it's black and white all the time.

15 I believe that -- you know, if the topsoil
16 is stripped, that the opportunity for mixing of the
17 topsoil and the subsoil is -- you know, that risk has
18 been eliminated. And having wet conditions will not
19 further -- cause further detriment to the soil at that
20 point.

21 You know, it does introduce different other
22 items such as compaction and other things if it's
23 really wet, but trying to have a hard, fast rule tied
24 to how far pieces of equipment sink in or how much
25 water there is on a property, I think that's really

1 hard to determine.

2 Certainly if there's a way that could be
3 reached and we all agreed on that, then more than
4 willing to do whatever the Board wishes us to do on
5 that front.

6 Q. So you're getting ahead of me a little bit.
7 I just wanted to know from the get-go whether you
8 agree clear rules would be good.

9 A. I believe the rules that are set in place
10 now that the Board adopted are sufficient to manage
11 the construction of the project.

12 Q. So I'll take that as a yes. Clear rules
13 would be good.

14 A. The existing rules, I believe, are
15 sufficient.

16 Q. Counties witness Kruienza disagrees about
17 whether the current rules are sufficient, but he also
18 prefers clear rules.

19 Do you agree objective criteria would be
20 good?

21 A. I think I'd have to defer to one of our
22 other witnesses, Aaron DeJoia, who is a certified soil
23 scientist. He's going to be able to answer those
24 questions about if there is a means to objectively
25 define what wet conditions are.

1 My understanding is that the existing rules
2 are sufficient, they've been beefed up, per say, since
3 Dakota Access and other projects, and that they should
4 be good for us to construct our pipeline.

5 Q. But it's you and it's Mr. Kruiuzenga who
6 have to make this work in the field, right, and have
7 to be able to agree on when the rules that have been
8 developed by people like Mr. DeJoia or Mr. Liebman or
9 the Board apply. Because it's you guys who have to
10 decide when construction stops; right?

11 A. That's correct.

12 Q. So wouldn't it reduce the number of
13 disagreements over whether construction should stop to
14 have objective criteria?

15 A. Potentially.

16 Q. Thank you. I want to move on to some other
17 topics then. And mostly related to your rebuttal
18 testimony and those exhibits.

19 MR. WHIPPLE: So if we could pull up his
20 rebuttal testimony. I'm going to refer in a few
21 places to that.

22 BY MR. WHIPPLE:

23 Q. So at page 7, line 15, of your rebuttal
24 testimony, you accuse Professor Hamilton of
25 misunderstanding how pipelines impact present and

1 future land uses. And at page 7, line 23, you accuse
2 Professor Hamilton of wrongly stating that pipelines
3 prevent other uses.

4 But isn't Hamilton's point that it's the
5 zoning regulations that restrict the uses?

6 A. You know, I'm not an attorney. The point I
7 was trying to make is that pipelines coexist with
8 development all across the U.S., including Iowa. I'm
9 sure you've heard the statistics that there's 47,000
10 miles of pipe, there's 13,000 miles of PHMSA-regulated
11 pipelines in Iowa. You know, we've done an analysis.
12 There's tens of thousands of businesses, dwellings,
13 churches within near vicinity of those pipelines.
14 And, in our estimation, they have not curbed
15 development. They can coexist with almost all land
16 uses.

17 Q. So I'm going to stop you there. Because
18 that's really not what I asked.

19 A. Okay.

20 Q. All right. So you've read Hamilton's
21 testimony.

22 Yes?

23 A. Yes.

24 Q. You say you've reviewed zoning regulations.

25 Yes?

1 A. I've reviewed -- yes. I haven't reviewed
2 every single word of every zoning regulation that's
3 been proposed, but yes.

4 Q. That would be quite a job. I haven't done
5 that either. But, generally speaking, the company
6 represents that it has reviewed zoning ordinances for
7 the counties that are in your footprint; right?

8 A. Yes.

9 Q. So you make statements in your rebuttal
10 testimony about Hamilton's testimony. And so I'm not
11 asking for your legal opinion. I'm going to explore
12 with you what you've said about Hamilton's testimony.

13 A. Okay.

14 Q. Okay. So isn't it a mischaracterization of
15 Hamilton's testimony to say that he thinks a pipeline
16 prevents farming afterwards?

17 A. Can you rephrase that?

18 Q. Let me rephrase that. Hamilton's testimony
19 talks about how zoning regulations prevent certain
20 types of uses within certain zones, doesn't it?

21 A. I'd say that's correct.

22 Q. And so is there anywhere in Hamilton's
23 testimony where he says constructing a pipeline would
24 prevent farming afterwards?

25 A. I don't recall if he specifically stated

1 that, but, you know, I guess, again, my point is
2 that -- you know, I'm not refuting everything that he
3 mentioned. In my estimation, and again I'm not an
4 attorney, counties have the authority to regulate
5 certain things and they have the authority to not
6 regulate certain things, and the placement of a
7 pipeline, to me, is not in the purview of a county.

8 Q. For the moment, I'm just asking about
9 what's in Hamilton's testimony. Since you've reviewed
10 it and you're talking about it in yours. I would
11 represent that it doesn't say pipelines prevent
12 farming.

13 Isn't it more accurate to say that a zoning
14 regulation would prevent farming in a zone that's of
15 another type?

16 A. "A zoning regulation would prevent farming
17 in a zone of another type."

18 Q. An area zoned residential, can you put a
19 factory in it?

20 MR. LEONARD: Objection, Your Honor.

21 BOARD CHAIR HELLAND: State your objection.

22 MR. LEONARD: Calls for a legal conclusion
23 as to what the zoning ordinance allows.

24 BOARD CHAIR HELLAND: Mr. Whipple, do you
25 have a response?

1 MR. WHIPPLE: Your Honor, he's said he's
2 reviewed zoning ordinances, he has testimony about
3 lawsuits. He's talking about what zoning ordinances
4 do and do not require. It's all over his testimony.

5 BOARD CHAIR HELLAND: You may answer if you
6 know.

7 A. You know, again, if a specific county's
8 zoning ordinance precludes certain land uses within a
9 county and, like you said, a residential -- an area is
10 zoned for agricultural and it doesn't allow for
11 residential development, then I would agree that then
12 that would not be allowed in that county. If that's
13 what the zoning ordinance says.

14 BY MR. WHIPPLE:

15 Q. And that's to say that it's the zoning
16 regulation and its content that prevents it; right?

17 A. Again, I'm not an attorney, but I would say
18 yes.

19 Q. I want to move on to another part of the
20 testimony.

21 Isn't it true that the terms of Summit's
22 easement prevent a landowner from building structures
23 within the 50-foot easement area?

24 A. That's correct.

25 Q. And that would include housing; right?

1 A. In the permanent easement, correct.

2 Q. In the permanent easement.

3 A. Yes.

4 Q. And you can't put a factory in the
5 permanent easement either, can you.

6 A. You cannot.

7 Q. You can't put any structure in the
8 permanent easement; correct?

9 A. You cannot put any permanent structure
10 within the 50-foot permanent easement.

11 Q. So, at page 8, line 8, of your testimony,
12 you say Hamilton is making false statements about the
13 easement corridor. But aren't you misconstruing his
14 testimony? He's talking about the 50-foot easement
15 corridor, isn't he?

16 A. You know, I took his testimony as he's
17 saying that you cannot develop -- that there won't be
18 developments happening around pipelines. So, in my
19 estimation, you cannot build within the 50-foot
20 permanent easement. However, you can develop the full
21 extent of the rest of the property. And that's
22 obviously seeing thousands of locations across the
23 United States where there's neighborhoods developing
24 all around pipelines.

25 Q. So maybe you just misunderstood Hamilton's

1 testimony instead of Hamilton making a false statement
2 about the easement.

3 Wouldn't you agree?

4 A. If he was intending to say that the
5 easement is stating that you cannot develop a
6 neighborhood or an industrial complex within the
7 50-foot, then yes.

8 Q. Okay. I want to move on to the proximity
9 study. Which was your rebuttal Exhibit 2.

10 You didn't prepare this study, did you.

11 A. I did not.

12 Q. Who prepared this study?

13 A. So my understanding is that this was
14 prepared for Dakota Access when their project was
15 developed.

16 Q. Yeah, but who prepared it. Let's go one
17 question at a time.

18 A. I can't recall the name of the company that
19 prepared it.

20 Q. So you wouldn't know the person either.

21 A. It's escaping me at this point.

22 Q. Do you know the background of the person or
23 firm that prepared it?

24 A. You know, I don't know all the details of
25 the person that prepared it. I think essentially the

1 point of the exhibit is to show in multiple locations
2 across Iowa that there was a pipeline installed with
3 no development in the near vicinity of that across
4 agricultural lands and over time there were
5 developments that were built all around those
6 pipelines. And that was generally the intent of
7 providing this exhibit.

8 Q. Are you a real estate agent?

9 A. I am not.

10 Q. Are you a real estate appraiser?

11 A. I am not.

12 Q. Are you qualified to evaluate the analysis
13 of people who are?

14 A. In what capacity?

15 Q. Well, let's assume whoever prepared this
16 study was a real estate appraisal firm. That seems
17 likely, wouldn't you agree?

18 A. Not necessarily.

19 Q. Well, it's your exhibit. Who made it?
20 What's the background?

21 A. Again, the intent of the exhibit is to show
22 that there's been significant development around
23 existing pipelines in Iowa. And this is pointing to
24 three specific examples.

25 I don't think you need to be a real estate

1 professional to show the intent -- or to understand
2 the intent of what this was for.

3 Q. I'd really like to get into the accuracy
4 and the relevancy of this study. And I think that
5 begins with understanding who made it and what the
6 assumptions are, wouldn't you agree?

7 A. You know, I would say that trying to debate
8 the accuracy of a pipeline, and, you know, basically
9 pictures over time showing housing being constructed
10 around those pipelines, I'm not sure what there is to
11 debate about the accuracy of that.

12 Q. So this was prepared for Dakota Access;
13 right?

14 A. That is my understanding, yes.

15 Q. Dakota Access is an oil pipeline.

16 Correct?

17 A. Correct.

18 Q. When was this study prepared then?

19 A. You know, again, I don't have the exact
20 date. It would have to have been in 2007, 2006 time
21 frame, I would imagine. Shortly before Dakota Access
22 was installed and commissioned.

23 Q. So that's quite a while ago.

24 A. Correct.

25 Q. So would you say it's stale?

1 A. I would not.

2 Q. You wouldn't.

3 A. I would say that, you know -- again, the
4 intent in showing what this was for is not stale. I
5 mean, there's pipelines, and development around
6 pipelines, happening every day. This was just to
7 pinpoint a few discrete examples of that.

8 Q. Yeah, but this is a study about value.
9 Right?

10 A. You know, for the purposes of myself, you
11 know, it was to show that development can happen
12 around the pipelines. The development -- I mean, the
13 pricing and how that impacts pipelines, Micah Rorie,
14 our director of right-of-way, would be much more
15 equipped to speak to that portion of it.

16 Q. But you're sponsoring the exhibit. So I'm
17 going to ask you those questions.

18 A. Okay.

19 Q. If development happens around pipelines,
20 wouldn't that be because zoning authorities allow it
21 to happen?

22 MR. LEONARD: Objection, Your Honor. Calls
23 for a legal conclusion as to what the zoning ordinance
24 allows.

25 MR. WHIPPLE: Your Honor, he's already

1 testified and responded to a number of questions about
2 what zoning allows. And he's the one introducing the
3 study and the maps.

4 BOARD CHAIR HELLAND: You may answer if you
5 can.

6 A. Again, I'm not a zoning expert. If an area
7 was zoned for development in residential use and a
8 pipeline was placed across that property, then I would
9 imagine, unless that property was rezoned, that they
10 would have authority to construct around the easement.

11 BY MR. WHIPPLE:

12 Q. Right. I'm not trying to trip you up with
13 tricky legal questions. I mean, just generally
14 speaking, when someone wants to build a home or a new
15 commercial building, they have to get a zoning permit.
16 Right? I mean, that's kind of common knowledge, isn't
17 it?

18 A. I would imagine that, yes, they would need
19 a permit to construct.

20 Q. So, just logically, that would have been
21 approved by zoning authorities.

22 A. What? The construction of a residential
23 dwelling within the vicinity of a pipeline or what's
24 the question here?

25 Q. Correct. The construction of a residential

1 building in the vicinity of a pipeline after the
2 pipeline is installed. Presumably, it's still subject
3 to zoning; correct?

4 A. Which would be considered independently of
5 a pipeline easement.

6 Q. Does this proximity case study anywhere
7 address zoning regulations?

8 A. I don't believe so.

9 Q. Okay. I think we're done with the
10 proximity study.

11 At page 7 of your rebuttal testimony, you
12 refer to a lawsuit between Shelby County and Summit.

13 Are you aware that that lawsuit has been
14 appealed to the Eighth Circuit and that the result is
15 not final?

16 A. I'm aware that it has been appealed.

17 Q. Are you also aware there are five other
18 lawsuits pending over zoning?

19 A. I wasn't aware of the exact number. I knew
20 that there was several others that were pending.

21 Q. So you would agree, wouldn't you, that
22 there's not a final answer on preemption?

23 A. I'm not an attorney, but I know that Judge
24 Rose ruled that what Shelby enacted was superseded by
25 both federal and state regulations. You know, how the

1 appeals work out and how that is affected by other
2 pending legal action, I can't comment to that.

3 Q. But it could take some time, wouldn't you
4 agree?

5 A. Again, I'm not an attorney.

6 MR. WHIPPLE: That's all I have, Your
7 Honor.

8 BOARD CHAIR HELLAND: Thank you.

9 Mr. Meyer.

10 MR. MEYER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MEYER:

13 Q. Sir, I represent Hardin County supervisors.
14 Do you have any experience with pipeline
15 construction under private farm drainage tile?

16 A. I do.

17 Q. When?

18 A. So I was involved with an ethane pipeline
19 constructed in Ohio for Kinder Morgan.

20 Q. I'm sorry. What kind of pipeline?

21 A. It was ethane.

22 Q. What is that?

23 A. Hazardous liquid pipeline ethane. Which is
24 a constituent of natural gas liquids.

25 Q. As far as the size --

1 A. 12-inch diameter.

2 Q. -- of the pipe and the pressure, is it
3 similar to what is proposed in this permit
4 application?

5 A. I would say yes, it is.

6 Q. How long ago was that?

7 A. I think it was 2016.

8 Q. That was in a different state?

9 A. It was in Ohio. There was extensive drain
10 tile across the entire footprint of that project.

11 Q. Do you have any experience with private
12 farm drainage tile in Iowa?

13 A. I do not.

14 Q. Have you become familiar, or have you
15 familiarized yourself, with the drainage districts to
16 be crossed in Hardin County?

17 A. Generally, I am familiar. You know,
18 obviously we've got a team of people working for us,
19 and we've got others on our team that have been
20 handling the drainage district relationships. So,
21 generally, I'm familiar.

22 You know, all the specific meetings that
23 have happened -- I believe dozens, if not hundreds, of
24 meetings have been conducted with the drainage
25 districts, and there's other representatives at our

1 company that have been conducting those.

2 Q. When you say "generally," does that include
3 sort of the general idea of how private drainage tile
4 districts are governed and how the costs are shared
5 between growers within that district?

6 A. I'm not aware of those specifics.

7 Q. Have you become familiarized with the
8 Hardin County drainage district permit requirements in
9 the districts that you're going to traverse?

10 A. I'm aware generally of some of the
11 requirements that they have requested. You know, I
12 think that we cross, I believe, almost 200 drainage
13 districts in 17 counties. So there's quite a few
14 different counties involved here, and I don't know the
15 specifics of every single county and every drainage
16 district.

17 Q. To make sure we're talking the same
18 language, when you say "drainage districts," you mean
19 formally organized under Chapter 468 of the Iowa Code?

20 A. I believe that's correct, yes.

21 Q. Have you reviewed the direct testimony of
22 Hardin County witness Lee Gallentine?

23 A. Yes.

24 Q. And did you review the exhibit? In
25 particular, the exhibit that set forth the permit

1 requirements to go through private drainage tile
2 districts in Hardin County?

3 A. Again, I've reviewed it. I don't recall
4 all the specifics. I do recall some of the criteria
5 in there that would be difficult to comply with or
6 problematic for us per se.

7 Q. And "difficult" could just be another word
8 for "challenged," but it could be completed yet comply
9 with the permit requirements as they exist currently
10 in Hardin County; right? I'm not saying it's your
11 preference, just that it could be completed and still
12 comply.

13 A. You know, there's certain items within, I
14 believe, that county's drainage district ordinance, as
15 well as others, that in our estimation could be more
16 detrimental for counties. And/or just items that we
17 don't think add any value but add burden and cost as
18 well. Such as the GPS tracking on all the equipment
19 that's 8,000 pounds and higher.

20 Q. Have you ever sat in on a drainage district
21 meeting when growers dispute who caused a drainage
22 problem in their district and how are those costs
23 going to be shifted among themselves?

24 A. I have not.

25 Q. GPS would help a lot with those arguments.

1 That's why that's required.

2 But are you saying today that Summit
3 couldn't comply -- that this project would die if you
4 had to comply with those drainage district permits?

5 A. No, what I'm saying is that there are
6 certain things within that ordinance that I think are
7 unduly burdensome with adding no value. Again, the
8 8,000-pound limit GPS tracking.

9 And, again, I'm not a farmer, but I would
10 venture to guess that basically every single piece of
11 farming equipment exceeds that. I doubt that any of
12 the farmers on the properties that we cross are going
13 to have GPS tracking devices on their farming
14 equipment. So I don't know how that would
15 automatically identify who had caused any kind of
16 drainage issues.

17 Q. Well, in the future when a problem arises,
18 knowing who crossed, what it weighed, and where it
19 went is going to resolve, or go a great distance in
20 resolving, disputes as to who is going to write the
21 check to fix the broken tile.

22 Would you agree that that information would
23 help resolve those disputes quickly and efficiently
24 and fairly?

25 A. I don't believe that putting the GPS

1 trackers on equipment 8,000 pounds and higher is going
2 to cause it to be easily resolved. And, again, for
3 the reason I just mentioned. Every single piece of
4 farming equipment exceeds 8,000 pounds. So there will
5 be a dispute as to whether that was, you know, the
6 farmer themselves that caused damage.

7 But the intent of Summit is to resolve all
8 issues. And I know that in our easement -- and,
9 again, I've worked in states that have drain tile,
10 I've worked on projects that have drain tile, and
11 pretty typically it's a one-year warranty on the drain
12 tile and then it's the farmer's issue after that.

13 You know, in our easement we've put that
14 we're going to warranty drain tile indefinitely. So,
15 if there's an issue in year two, year five, year ten,
16 year twenty, we're going to be obligated to come back
17 and fix it and make it right. Certainly we would
18 extend that to the counties and the drainage districts
19 as well.

20 So being able to identify what caused the
21 problem and being able to rectify that, we certainly
22 are, you know, willing and wanting to be able to do
23 that. I just don't think that the 8,000-pound GPS
24 trackers are the way of doing that.

25 Q. So I know you don't like that aspect of the

1 permit, but this project could move forward even if it
2 had to comply with every letter of the existing
3 permits; correct?

4 A. I mean, I would say, again, that there are
5 certain things in there that we don't believe that
6 should be part of that. We'd like to try to talk
7 through that and come up with a different solution.
8 And I'll just leave it at that.

9 Q. Well, can you let your yes be yes and your
10 no be no? You could do this and still comply;
11 correct?

12 A. Could we put GPS trackers on every piece of
13 equipment if we absolutely had to? Yes.

14 MR. MEYER: Thank you. No other questions.

15 BOARD CHAIR HELLAND: Thank you.

16 Mr. Jorde, I believe you're next.

17 MR. JORDE: Thank you.

18 CROSS-EXAMINATION

19 BY MR. JORDE:

20 Q. Is it true you did not use any plume or
21 dispersion modeling when laying out the preliminary
22 pipeline route?

23 A. That's correct. You know, Jimmy Powell
24 obviously discussed that ad nauseam yesterday. The
25 plume model, the dispersion analysis, is not a routing

1 tool. It's used to inform risk.

2 So, again, that was pretty well established
3 yesterday with Mr. Powell.

4 Q. And that's the opinion of industry who says
5 forget the fact that this may not be an intelligent
6 route, we'll just focus on ways to minimize or
7 mitigate that risk; right?

8 A. I disagree with that.

9 Q. So you would agree it would be intelligent
10 if we are analyzing if a route should be approved to
11 first know and appreciate and understand the risks
12 relative to CO2 air dispersion and plume modeling;
13 correct?

14 A. I disagree.

15 Q. Do you believe that citizens and first
16 responders and counties and people with responsibility
17 for existing assets, existing land use, homes,
18 businesses, would be better informed if they were
19 aware of the actual risks via sharing a dispersion
20 model or plume model?

21 A. Not necessarily. Again, the dispersion
22 modeling, the analysis, all the discussion around
23 that, we've got other witnesses such as Brian Louque
24 and others that are going to be able to speak to that
25 much more intelligently than me.

1 Q. Now, a 24-inch pipeline. Are you aware of
2 larger CO2 pipelines under the pressure you propose
3 than 24 inches anywhere in the U.S.?

4 A. I'm aware that there are pipelines in
5 service today, CO2 pipelines, that are operating at
6 pressures north of 3,000 psi. And there's also
7 30-inch diameter CO2 pipelines.

8 So there are pipelines currently operating
9 safely today that are larger diameter and operating at
10 higher pressures.

11 Q. And for you to use the word "safely," is
12 that because there hasn't been some catastrophe yet
13 with those pipelines?

14 A. You know, I used the word "safely" because,
15 you know, there's over 54 -- or around 5,400 miles of
16 CO2 pipelines in service today across the U.S. in a
17 handful of different states.

18 You know, we've done an analysis on those
19 pipelines. Just to put it into perspective, in the
20 near vicinity of those existing pipelines, there's
21 tens of thousands of structures currently operating
22 safely.

23 You know, I've analyzed the routes of those
24 pipelines, I've identified schools that are within
25 50 feet of existing CO2 pipelines, I've seen churches

1 and businesses and schools operating in the near
2 vicinity of those pipelines.

3 And PHMSA-regulated pipelines have public
4 safety records. So the safety record for CO2
5 pipelines is pristine, essentially, comparable to
6 other infrastructure. Certainly comparable to
7 railroads and other, again, infrastructure.

8 So CO2 pipelines, in the last 25 years,
9 have only had one PHMSA-recordable injury. And that
10 was as a result of a pipeline contractor striking a
11 CO2 pipeline during clearing activities.

12 So no one has ever died from a CO2
13 pipeline, and that's why I believe that I can say that
14 CO2 pipelines are safe.

15 Q. And I'm so glad you brought up injury. You
16 understand that it's the operator's responsibility to
17 report injury. To self-report. PHMSA doesn't send
18 out people looking for injuries.

19 Do you understand that?

20 A. Well, a prudent operator is required to
21 follow PHMSA guidelines. And, if there's a lost time
22 injury, then they would have to report that to PHMSA
23 to be in compliance. And then that would be part of
24 the record.

25 Q. So you'd agree with me that it's incumbent

1 upon the operator to decide if they report something
2 which they determine is an injury or not report it;
3 correct?

4 A. So I would agree that if a negligent
5 operator fails to make prudent reporting requirements,
6 then, yes, they would be breaking the law in my
7 estimation.

8 Q. And is the gist of your pitch here, sir,
9 that because other people have made unintelligent
10 decisions of putting schools nearby potentially fatal
11 pipelines that could injure and kill the people
12 involved in the activities on the playground or in the
13 school, that, therefore, this Board should just go
14 ahead and give you the route you want in Iowa?

15 A. No, that's not -- that was not the intent
16 of my comment.

17 Q. Okay. So who cares if somewhere else there
18 happens to be a pipeline and there happens to be a
19 structure. That's not at all relevant to this project
20 proposed by you in this state, would you agree?

21 A. I would say that the existence of CO2
22 pipelines across the United States is certainly
23 relevant to what we're doing here today. And the safe
24 coexistence of those pipelines is certainly relevant
25 to what we're proposing here today.

1 Q. And you're referencing other projects that
2 are not owned, operated, or managed by Summit;
3 correct?

4 A. Other projects that were built to the same
5 design, construction, and operation standards that
6 we're going to comply with. And exceed.

7 Q. So you're complying with the same
8 construction standards as the 20-, 30-, and
9 40-year-old pipelines? Is that what you're saying?

10 A. We're complying with PHMSA guidelines.
11 Which those pipelines did as well. And we're
12 exceeding those guidelines in a number of different
13 ways.

14 Q. You say that the preliminary route was
15 determined, it's an iterative process, requires input
16 from many experts.

17 Were there any experts you consulted that
18 you didn't also pay?

19 A. Not that I recall.

20 Q. And you use a curious word there.
21 "Stakeholders." Are the people on the potential
22 route; the communities, the boards of supervisors, the
23 county boards, are those kind of people considered
24 stakeholders that would be important to hear from in
25 determining a route?

1 A. You know, certainly I believe that I
2 considered all landowners, other constituents,
3 stakeholders in forming the route.

4 But the preliminary route, you don't go out
5 and talk to 6,000 landowners. What you do is we
6 establish the preliminary route. We did a detailed
7 analysis with routing experts, subject matter experts,
8 across environmental/cultural expertise,
9 constructability, existing land uses, trying to follow
10 existing infrastructure where possible.

11 And then once the preliminary route is
12 established, and the corridor has been established in
13 Iowa, then that's when the detailed analysis on the
14 route takes place and we engage with all landowners
15 across the entire project footprint, we conduct our
16 surveys, we see where we can or should place the
17 pipeline, we consult with landowners. And we've
18 adjusted the route 1,500 times in the state of Iowa,
19 and hundreds of those route adjustments were made at
20 the request of landowners to accommodate their
21 existing and future land uses.

22 Q. All right. So it's true you didn't
23 consider any future land use maps or master plans
24 prior to getting the preliminary route set?

25 A. That's not correct. So our GIS company did

1 pull down information from the Iowa Economic
2 Development Authority and overlaid that with our
3 pipeline route and found that there was no obvious
4 conflicts outside of existing wind farm and solar farm
5 developments, which we certainly knew we would cross
6 and we would work that out with those entities.

7 So I would say that that's incorrect.

8 Q. So do you have firsthand knowledge and can
9 you tell me the name by county of each county whose
10 master plan for the county development was utilized in
11 informing the preliminary route?

12 A. I cannot give you that specific
13 information.

14 Q. What about a single city?

15 A. A single city that what?

16 Q. Where you utilized the future land use or
17 the master plan or the vision plan, whatever that city
18 might have called it, to help inform Summit when
19 selecting the initial route.

20 A. So, again, once the initial route was
21 developed, we did outreach to counties. We've had
22 thousands of meetings, emails, correspondence with
23 county engineers, county officials. I believe we've
24 had over 300 in-person supervisor meetings. And we
25 did take into consideration hard, concrete development

1 plans. But, quite frankly, there was, on a hand, how
2 many you could actually count that were provided to
3 us.

4 I can name a specific example around
5 Merrill in Plymouth County where the county engineer,
6 the county supervisors, had advised that we move the
7 line further west to get around an existing
8 development. We did move that route to accommodate
9 the request and to accommodate the landowner. And all
10 landowners within the near vicinity all around the
11 city of Merrill signed voluntary easements.

12 So that is one of the only concrete things
13 that was identified to us, and we did adjust the route
14 to accommodate it.

15 Q. You would agree there's no such thing as a
16 voluntary easement with the threat of eminent domain
17 over someone's head; correct?

18 A. So -- I'd disagree with that.

19 Q. Will you commit today on behalf of Summit
20 to not use eminent domain to acquire any parcels or
21 any easements that you desire for your proposed
22 project?

23 A. I can't make that commitment.

24 Q. In terms of rerouting, would you agree that
25 if you moved by one foot from the route you had to a

1 present route to accommodate one small thing on a
2 landowner's piece of property, that you would be
3 including that in your 1,500 reroute number?

4 A. I don't know about one foot. I know that
5 there's some of those that were minor reroutes, some
6 were more major reroutes.

7 Certainly the pipeline has moved
8 considerably on individual landowners' properties.
9 We've hugged property lines, we've completely adjusted
10 the route on their property to accommodate their needs
11 and concerns. And I think that reflects why we're
12 well over 70 percent acquired on easements.

13 Q. What's the difference between a minor
14 reroute and a major reroute?

15 A. I think that's subjective, but, to me, you
16 know, shifting the pipeline tens of feet to
17 accommodate survey findings, cultural sites, wetlands,
18 things of that nature, would be more minor. A
19 landowner requesting that we completely alter the
20 alignment of the pipeline to hug property lines, to
21 me, would be more of a major reroute.

22 Q. So there's not a number where we shift from
23 minor to major in terms of how Summit looks at this?
24 A number of feet?

25 A. No, not that I'm aware of.

1 Q. Okay. How many right angles does the
2 proposed current route have?

3 A. I don't have that figure in front of me or
4 know that number.

5 Q. You would agree that it has many 90-, 60-,
6 30-degree curves and angles in it as it meanders
7 across Iowa; correct?

8 A. That's correct.

9 Q. And it would be true then that you could,
10 if you were granted a permit, run along the property
11 line of any landowner's property rather than going,
12 for instance, directly through the middle or from
13 corner to corner dissecting the field.

14 A. So a couple things there. One, I would say
15 that -- I would argue that the impacts of that
16 property would be more substantial if you're adding
17 significantly more pipe on that landowner's property
18 and encumbering more of that land.

19 Secondly, with, you know, well over
20 70 percent acquired for the state of Iowa, the point
21 of entry and the point of exit could very well be
22 established on a landowner's property. So there's
23 constraints there.

24 And then, even further, with the Iowa
25 process and the Exhibit H process, we have a certified

1 plat identifying the exact location of the pipeline
2 alignment on that landowner's property. So, at this
3 point, I'm not aware that we can make those wholesale
4 changes.

5 If it leads to a voluntary easement now, it
6 leads to an easement being signed before condemnation
7 proceedings move forward, then I believe we can make
8 those changes. And we have and we continue to try to
9 work with landowners on the route. But a wholesale,
10 "Well, we're going to hug property lines," is not
11 possible at this point.

12 Q. Well, it's possible. You just wouldn't
13 want to do it.

14 A. I don't believe it's possible based on the
15 Exhibit H process.

16 Q. You don't think you can change -- well,
17 then what's the point of the value of the statement
18 saying, "We're willing to work with landowners and
19 just talk to us, gosh, darn it, and we'll work with
20 you"? If you can't move it, then what's the point in
21 talking to landowners and hearing them out?

22 A. I think we still can move it. Minor
23 adjustments at this point, we're still willing to
24 listen to accommodate those if we can.

25 You know, the route is very mature. We've

1 completed 97 percent -- I think an almost higher than
2 that percentage of our surveys, cultural surveys, bio
3 surveys, all those types of things. We have Army
4 Corps of Engineer permits. We have all these other
5 additional permits that are applied for and in
6 process.

7 So, again, minor shifts to the route to
8 accommodate landowner needs, we're still willing to do
9 that. Completely altering the alignment and
10 completely hugging all property lines is not something
11 we can do at this point.

12 Q. Again, you could do it. Are you telling me
13 if this Board put a condition on it to do just that,
14 you'd say no and you'd leave and you'd say no more
15 pipeline?

16 A. We're going to do whatever the Board asks
17 us to do.

18 Q. Okay.

19 A. You know, adding additional pipe -- so, if
20 you bisect a property versus hugging the property
21 line, you're adding significantly more pipe. So
22 you're encumbering more land, you're causing more
23 disturbance to the soil. There's a lot of reasons why
24 what you suggested to me is not the most favorable
25 thing.

1 Q. Because your premise is encumbering more
2 than you have to is not a good thing.

3 A. Generally, yes.

4 Q. Okay. So encumbering any then is also a
5 bad thing.

6 A. I disagree. I mean, we need to build the
7 pipeline. We need an easement to construct it. We
8 need a permanent easement to build the pipeline.

9 Q. Well, there's been no showing that you need
10 anything and there's been no showing that anyone on
11 earth needs this pipeline. You have a preference to
12 capture tax credits and that's what you want. You
13 don't need anything, do you.

14 MR. LEONARD: Objection. Argumentative.

15 BOARD CHAIR HELLAND: Do you have a
16 response?

17 MR. JORDE: No. I don't think it's
18 argumentative. That's my response.

19 BOARD CHAIR HELLAND: Okay. I think you
20 can rephrase your question.

21 BY MR. JORDE:

22 Q. You don't need anything. You want a
23 pipeline. You want the ability to make money. And
24 that's fine. But you don't need it, do you.

25 A. So we're endeavoring to build this pipeline

1 for all the economic reasons that Mr. Pirolli and
2 Mr. Powell and Mr. Broghammer gave us.

3 You know, I'm here to construct -- design,
4 construct, and commission this pipeline. So I'm not
5 here to debate the need of the project.

6 Q. All right. Good. So you agree then you
7 don't need it; right?

8 A. I disagree.

9 Q. Okay. Why do you need this pipeline? Why
10 do you need it? Not want it, need it. I mean, maybe
11 you'll convince me and I can go home. So give me your
12 best shot.

13 A. Again, it's -- the need for the project has
14 been portrayed by others that have already gone and
15 testified. And I'll leave it at that.

16 Q. How many letters from tribes supporting
17 your project do you have that you've submitted in this
18 docket as evidence? Native American tribes.

19 A. I don't remember that information. You
20 know, we have a very robust tribal engagement plan.
21 We have others that are part of the project that are
22 much better equipped to speak to that.

23 I know that we've tried to go above and
24 beyond, where we can, to work with tribes, to use
25 tribally owned businesses. We're using some for

1 fabrication of some of our equipment. We've made the
2 commitment to conduct tribal surveys for the entire
3 pipeline route. And that's completely voluntary.
4 That's not required.

5 So we're doing everything we can to engage
6 the tribes and to keep them part of the process, but
7 there's another witness, Mr. Jon Schmidt, that would
8 be better equipped to speak to details there.

9 Q. You say -- when asked the question are any
10 homes displaced along the project route, you answer
11 no. And "displaced" would mean a home that is within
12 the 50-foot desired permanent right-of-way that would
13 have to be moved; is that correct?

14 A. That's correct.

15 Q. All right. And do you have a list, have
16 you uploaded a list, where it shows how many feet the
17 proposed center line of your proposed pipeline is from
18 any existing residence?

19 A. Have we uploaded a document that shows the
20 location of our pipeline and the distance to every
21 single residence along the entire pipeline route? I
22 don't believe that's correct.

23 Q. And I don't think you have either, but
24 wouldn't that be good to know in judging whether or
25 not this is an intelligent route that you've selected

1 to see how close you are to existing residences?

2 A. I know that some of the data requests
3 requested generally -- or specific quantities of
4 dwellings within certain setbacks. And that's been
5 provided. If additional information is requested by
6 the Board, certainly we'd be willing to comply with
7 that.

8 Q. What about the landowners that you want to
9 work with. I'm asking you, on their behalf, if you
10 can produce that.

11 Would you do that?

12 A. If the Board asked us to produce a
13 document -- every landowner that's got the pipeline
14 routed on their property should certainly know where
15 the pipeline is in relation to their home. And, if
16 there's specifics, we can provide that as needed.

17 Q. Is it true that the surveys, or the
18 quasi-surveys, that you've attached to easement
19 proposals, that they say essentially that those are
20 preliminary and leaving wiggle room for movement of
21 the potential pipeline on an individual property?

22 A. I guess I'm confused by -- what's a
23 "quasi-survey"? Are you referring to the sketches
24 that were attached to the easement?

25 Q. Sure.

1 A. You know, I'd have to defer to Micah Rorie,
2 who is our right-of-way expert, on details of the
3 easement and what legally we think we can or can't do
4 in relation to moving the pipe.

5 Q. You talk about a temporary reduction in
6 crop yield. Where does temporary stop and where does
7 permanent start in your mind? How many years?

8 A. I think there's a lot of different factors
9 involved with how quickly the yields will come back.
10 Certainly weather is a big part of that. And wet
11 compaction. I think the Board rules have been
12 expanded to try to mitigate that as much as possible.

13 And certainly we're going to do everything
14 we can to make sure that we do our reclamation
15 correctly and have yields come back.

16 With that said, I believe -- and, again,
17 Mr. Rorie can speak to the details, but I believe
18 we've made a commitment to keep landowners whole for
19 crop deficiencies indefinitely. And, if those can be
20 proven even after year three, year four, year five,
21 that we would keep landowners whole.

22 Q. And the "could be proven," that's the whole
23 key; right? Basically, the landowner who is
24 potentially having this project forced upon them has
25 the great privilege of having to convince you, or your

1 counterpart after you've sold and are gone, that, in
2 fact, the construction was the proximate direct cause
3 of the future or experienced crop yield loss; correct?

4 A. You know, It will be very clear, through an
5 as-built that's provided, where we constructed the
6 pipeline. I certainly would not think that we're
7 going to dispute landowners' claims of any crop
8 deficiencies in the area of the easement that we've
9 constructed in.

10 Q. But, unless you remove that requirement,
11 the hurdle for the landowner to go out and get the
12 yield maps and get whatever data they have and get
13 their crop records and then find somebody somewhere
14 when they call an 800 number to present it and then
15 you can just say no, it's on the landowner to prove to
16 you that there was yield loss caused by you; right?

17 A. There's got to be a mechanism in place, and
18 I don't know if that's been established and I
19 certainly am not the one involved with that, to be
20 able to prove that up. I would imagine we would make
21 that as least burdensome as possible.

22 And, you know, in my experience working at
23 pipeline companies -- you know, the benefit of the
24 doubt typically -- from what I've seen, the
25 landowners, you know, would be kept whole on something

1 even if there's some subjectivity involved there. And
2 I know, with the management team that we have in
3 place, that they want to do right by the landowners.

4 So, again, I believe and I feel strongly
5 that they're going to do right and they're going to
6 give the benefit of the doubt to the landowner when it
7 comes to things such as crop yield deficiencies, drain
8 tiles, et cetera.

9 Q. If you want to do right by landowners, why
10 are you suing over 120 families for eminent domain in
11 South Dakota before there's even a permit application
12 granted to you?

13 A. Again, you'll have to speak to Mr. Rorie
14 about the eminent domain and right-of-way concerns.

15 Q. What about the lawsuits suing landowners
16 for surveys that you then just dismissed, said you
17 didn't need them after all. What about that? Was
18 that doing right by landowners?

19 A. I think there was a couple within the state
20 of Iowa that happened. And, again, I'm not an
21 attorney. I can't speak to the legal reasons that
22 that was completed.

23 We surveyed north of 90 percent of the
24 entire route of Iowa. And the purpose of the surveys
25 is to inform the route so that we can have a

1 constructible route that does not cross critical
2 habitats, does not cross culturally sensitive sites,
3 et cetera, et cetera.

4 So those surveys are critical and needed
5 for all of our permits, including those with the Army
6 Corps of Engineers. So it's not something that we're
7 doing on a whim. They are needed to actually build
8 the pipeline.

9 MR. JORDE: I will offer Exhibit LO 555,
10 which is this witness's deposition.

11 MR. LEONARD: No objection.

12 BOARD CHAIR HELLAND: Seeing no objections,
13 it will be admitted.

14 MR. JORDE: Thank you.

15 BY MR. JORDE:

16 Q. You're familiar with the overall route map
17 that can be found on Summit's website under the
18 project footprint links for Iowa; is that fair?

19 A. I can't say that I have gone and looked at
20 that map recently. I don't know what version of the
21 route that that's projecting at this point.

22 MR. JORDE: If we could please pull up
23 Landowner 557, please.

24 BY MR. JORDE:

25 Q. And in the meantime, while we're doing

1 that, you were talking about equipment and 8,000
2 pounds and heavy equipment.

3 Do you know what, at a four-foot depth,
4 your pipeline is rated at? How much weight can be
5 driven across the easement at four foot of cover and
6 not adversely affect the pipeline?

7 A. I know that our engineering company has
8 done load analysis on the equipment that would cross
9 the pipeline. I don't have that readily available off
10 the top of my head on what the maximum equipment
11 weight is that could cross the pipeline at that depth,
12 but I would imagine it would be very significant and
13 much larger than any equipment that would be used for
14 normal farming operations. Or abnormal operations.

15 Q. So who would actually know that answer?

16 A. I mean, I could find out --

17 Q. Well, I need to know now. So if you
18 don't --

19 A. Well, specific engineering details I don't
20 have off the top of my head. So, if that's something
21 that's needed, we can get the analysis and upload
22 something to the docket that shows that. But I don't
23 have that off the top of my head.

24 Q. All right. And then you don't know of any
25 witness scheduled to testify after you that would know

1 that from your side?

2 A. I can't imagine that anyone is going to
3 know those exact figures off the top of their head.
4 And certainly none of the other witnesses that I'm
5 aware of would know that information.

6 Q. It's true, as of right now, you don't have
7 any permit approvals in any state to locate your
8 proposed hazardous pipeline; right?

9 A. That's incorrect.

10 Q. You have statewide permit approvals for
11 routing and siting?

12 A. We do not have any statewide permits. You
13 asked if we have any permit approvals. And we do.

14 Q. Well, not for routing. You've got water
15 approvals. You're going to suck out a bunch of water
16 everywhere if you get the route. I get that. But you
17 don't have any siting or routing approvals; right?

18 A. That's incorrect.

19 Q. You think you have siting and routing
20 approval?

21 A. I mean, we've got approved permits from
22 railroads and counties that are approving the
23 installation of a pipe at a certain location. So, to
24 me, that informs the route. That's a routing permit.

25 Q. Well, it doesn't inform the route, because

1 you said, "Here's our route," and then you wanted to
2 get a permit that corresponds with the route you have.
3 So it's not informing the route. You based it off
4 your route.

5 A. So we have permits permitting the existing
6 placement of our route.

7 Q. Okay. Which none of that can happen until
8 each state actually signs off on it; correct?

9 A. Correct.

10 Q. Now, looking at the map, Exhibit LO 557 --
11 and this was taken directly off your website. So, to
12 the extent this is incorrect, you might want to change
13 your website.

14 But do you see on the left-hand side there
15 in Ida County you've got a facility there, apparently
16 someone that's signed up with you, and then going all
17 the way south down into Fremont County.

18 I asked Mr. Powell about this. He kind of
19 name-checked you. That you were the guy.

20 Do you happen to know how many miles that
21 is from that yellow star in Ida County to the yellow
22 star in Fremont County?

23 A. I think it's, order of magnitude, 120 miles
24 or so.

25 Q. You would agree then that it makes no sense

1 for this Board to approve a route traveling 120 miles
2 across multiple counties affecting hundreds of
3 landowners solely for the benefit of that
4 Fremont-located ethanol plant; right?

5 A. I would not agree with that.

6 Q. And so do you believe that this Board
7 engages in a weighing of positive and negatives such
8 that the sole Fremont ethanol plant justifies
9 120 miles of additional hazardous pipeline in this
10 state?

11 A. I think there's criteria that the Board
12 uses to analyze granting a permit for a pipeline
13 project. And, you know, certainly this pipeline line
14 segment would be considered in that.

15 I believe Mr. Powell testified yesterday
16 that there are additional ethanol plants in the
17 vicinity of this pipeline who we are certainly talking
18 to and would be hopeful to add additional ethanol
19 plants, or other emitters, which would tie in to this
20 line segment.

21 And I would add that the line segment that
22 you mentioned, we're well over 70 percent acquired on
23 that. I believe that it's almost 75, 80 percent.

24 So, you know, I think that there's been a
25 lot of support, support of landowners on this route,

1 that have signed easements and come to terms.

2 Q. Okay. So I guess your answer is then no,
3 you think it's justifiable for a single private
4 business, the Fremont ethanol plant, to impact
5 120 miles of easements for its sole benefit.

6 A. My answer is that I believe, yes, it should
7 be a part of this project, and there's not some set
8 mileage criteria that determines whether some plant
9 could or couldn't be a part of this project.

10 Q. Well, sure, but you wouldn't expect this
11 Board to give you a permit based on your hopefulness,
12 would you, of future potential plants joining?

13 A. You know, what we're asking for the Board
14 for this pipeline line segment is to connect to an
15 existing plant that's part of this project. It's not
16 "hopeful" that others would sign up. There is a plant
17 that's already part of this project.

18 Q. And you stand by all the answers you
19 provided in your deposition which were given under
20 oath; right?

21 A. Correct.

22 MR. JORDE: Thank you. I don't have
23 anything further.

24 BOARD CHAIR HELLAND: Thank you.

25 Mr. Taylor, you are up next. We plan to

1 take a quick break at 3:30 and then come back at 3:45
2 to go into confidential session. So I just wanted to
3 put it on your radar so you can adjust questions, if
4 necessary. Unless you think you'll be done in that
5 time period. So I just wanted to put it on your
6 radar.

7 MR. TAYLOR: I'm pretty sure I'll be done.
8 I don't have that many questions. I don't think.

9 CROSS-EXAMINATION

10 BY MR. TAYLOR:

11 Q. Mr. Schovanec, in your prepared testimony,
12 you said that one of your fields of responsibility is
13 to determine environmental impacts along the route; is
14 that correct?

15 A. I'm sorry. I didn't quite catch that.

16 Q. Sure. From your prepared testimony, I
17 gathered that one of your responsibilities is
18 determining the environmental impacts along the route.

19 A. Again, you know, we've got a team of
20 personnel, and we have others, that are specifically
21 responsible for the environmental and cultural impacts
22 to the project. And certainly I'm aware of that and
23 overseeing that in some capacity.

24 Q. So you oversee that.

25 A. Generally, yes.

1 Q. If we could look at page 6, line 19, of
2 your initial testimony. Your direct testimony. You
3 talk about environmental reports.

4 Describe the environmental reports that
5 you're mentioning there.

6 A. You know, to me, environmental reports
7 are -- you know, we've conducted field surveys.
8 Certainly there's data collected from that for
9 cultural surveys, the tribal surveys, biological
10 surveys, species, habitats, et cetera, et cetera.

11 The environmental reports, to me, are the
12 reports that are generated after compiling all that
13 information and, you know, submitting those reports
14 into either the state process or with the Army
15 Corps of Engineers, U.S. Fish and Wildlife,
16 Department of Natural Resources, et cetera.

17 So, to me, it's just all the various
18 reports that are compiled for the different permitting
19 needs across the project.

20 Q. So there are written reports from the
21 environmental surveys and investigations that were
22 conducted; correct?

23 A. Again, there's specific reports that are
24 filed, applications for certain permits. So Army
25 Corps of Engineers, for example. I know that there

1 were reports conducted, compiled, for SHPOs. Again,
2 DNR, U.S. Fish and Wildlife, et cetera.

3 So, to the extent that that's what your
4 question was referring to, yes.

5 Q. Regarding the Corps of Engineers, are you
6 familiar with the process of getting a 404 permit from
7 the Corps?

8 A. Not specifically, but generally, yes.

9 Q. And, actually, in terms of a pipeline,
10 there is a -- a nationwide permit it's called; is that
11 correct?

12 A. Correct.

13 Q. And so what the Corps of Engineers does is
14 review what are called preconstruction notices, and
15 then, if they're satisfied with those, they issue
16 what's called a verification; is that correct?

17 A. Mr. Schmidt would be able to testify to
18 that, but that sounds correct to me, yes.

19 Q. And there are certain conditions that are
20 put on that verification; correct?

21 A. Potentially, yes.

22 Q. Do you know what the status of your Corps
23 of Engineers process is right now?

24 A. It's in process. You know, we've been
25 consulting with the Corps for a bit of time now.

1 They've been analyzing the route, they've requested
2 specific information, additional details, criteria,
3 et cetera. I know that we've compiled that and are
4 working to compile some of their requests and getting
5 that back to them.

6 The exact, you know, status of it -- again,
7 Dr. Jon Schmidt is one of our witnesses. He would be
8 much better equipped to speak to the specifics.
9 Because I haven't personally met with the Corps. I
10 know we have our environmental program manager that's
11 got regular updates with all the Corps districts. We
12 touch Rock Island, St. Paul, and the Omaha districts.
13 So we're touching three Corps districts, and they're
14 all working together on our permit.

15 Again, Mr. Schmidt would have the details
16 of the status of that.

17 Q. And then what about the Iowa Department of
18 Natural Resources. What's the process there?

19 A. I'd have to, again, defer to Mr. Schmidt,
20 but I know that we have been working with them on the
21 pipeline route. I think there were a couple potential
22 locations where they would be involved based on the
23 specific site that we were crossing, for example, but
24 I don't have the specifics. Mr. Schmidt would have to
25 speak to that.

1 Q. In terms of water crossings, there are
2 several ways you can do that. You can horizontally
3 drill underneath, you can do what's called open
4 trenching.

5 Is that correct? Are there any other ways
6 you can cross a water crossing?

7 A. I mean, you can bore it. You know, a jack
8 and bore. You can do a directional drill, you can
9 open cut it. That generally sums it up.

10 Q. And an open cut means that you dam up the
11 stream and then you dig a ditch below the dam and then
12 bury the pipe in that ditch; correct?

13 A. That's, yeah, a crude representation, yeah,
14 of what would be done.

15 Q. I'm rather crude.

16 A. So, yeah, we're crossing a number of
17 different water bodies through different means. The
18 vast majority of them are all being drilled.

19 Q. And then you put dirt back over it and let
20 the water run across it; correct?

21 A. You know, there's other compaction and
22 other best management practices that would be
23 administered. You know, which most of those, I
24 believe, are outlined in our environmental
25 construction plan.

1 Q. Have you submitted that environmental
2 construction plan to the docket in this case?

3 A. I believe it has been submitted, yes. My
4 understanding is that there was a data request that
5 asked for that. I don't remember which one or what
6 the date was, but I believe it has been submitted.
7 And, if it hasn't, we certainly can.

8 Q. I don't believe it's been uploaded to the
9 docket.

10 A. Okay.

11 Q. In response to Mr. Jorde, I believe, when
12 he asked you about incidents where a city or a local
13 government has asked for the route to be modified, you
14 mentioned the city of Merrill?

15 A. Correct.

16 Q. And that's the example every Summit
17 representative always uses.

18 Are there any other examples?

19 A. That we adjusted the route at the request
20 of who?

21 Q. A local government.

22 A. You know, I think some of the other
23 examples -- originally we draw the pipeline in a
24 straight line across roads because, you know,
25 individual counties have different requirements on

1 road crossing angles and things of that nature.

2 Whether you can open cut the road, whether you can
3 bore the road, for example.

4 So we've made hundreds, if not thousands,
5 of changes to the alignment to accommodate those
6 requests.

7 I know that we've worked with county
8 engineers on a couple requests. Extending drills and
9 doing some other things.

10 So there hasn't been that many discrete
11 requests that, "Hey, we want you to do this." A lot
12 of the requests are, "We just arbitrarily don't want
13 the pipeline." And there's nothing that we can do,
14 quite frankly, with that.

15 So we've tried to work with individuals in
16 counties where we can. Again, the route has matured
17 and is very mature at this point. And so I guess
18 that's my answer.

19 Q. Well, if a town said, "Well, you're going
20 through our city limits" or "you're within a couple of
21 miles of our city limits where we might want to
22 expand," you're saying you would not move the route to
23 accommodate those concerns?

24 A. You know, in your example, if we were a
25 couple miles outside of the city limits, we're working

1 with the landowner that owns that property. We're not
2 going to adjust the route on his individual property
3 to accommodate a town multiple miles away that he's
4 not even in the city limits of.

5 So we've really been consulting directly
6 with the individual landowners on their route
7 preferences as opposed to making wholesale changes to
8 accommodate some individual at the county or town
9 level.

10 Q. Well, let's talk about that then. What if
11 the route goes inside the city limits of a town.
12 Would you change the route there if the city said, "Go
13 outside of our city limits"?

14 A. You know, I think this goes back to the
15 discussion around the ordinances and what authority
16 towns and counties, et cetera, have in placing a
17 pipeline. Certainly pipelines can coexist inside
18 cities and developments. So that's kind of where I
19 would leave that.

20 Q. In response to one of Mr. Jorde's
21 questions, you were talking about the Iowa Economic
22 Development Authority. And I didn't catch what their
23 involvement is.

24 A. So, in conversations that I've had with the
25 routing personnel, the Iowa Economic Development

1 Authority has publicly available information through
2 PDFs that can be looked at that show planned
3 developments across the state of Iowa.

4 And I was told that we utilized that and
5 reviewed that and overlaid that with our route to see
6 if there were any major conflicts within the routing
7 process. And outside of wind farms and solar proposed
8 developments, that there were none.

9 Q. Did you listen to any of the landowner
10 testimony over the previous two weeks?

11 A. I listened to a good majority of it. Not
12 all of it.

13 Q. Did you hear, first of all, the director, I
14 guess is his title, of the economic development agency
15 in Charles City?

16 A. I did.

17 Q. And didn't he express that their agency
18 owns land through which the pipeline is planned to go?
19 That is set for development?

20 A. That's correct. Yeah. I mean, so we've
21 had multiple meetings with Charles City. And, in my
22 understanding of how those discussions have gone, at
23 some point there was a verbal agreement that we would
24 be able to work something out.

25 And, you know, we're paralleling two

1 existing natural gas pipelines that go through that
2 property. We certainly offered up route alternatives
3 on that property. I can tell you that I met with them
4 personally and offered up that we would route the
5 pipeline any way possible to accommodate them.
6 Whether that's hugging the north boundary, the south
7 boundary.

8 And, ultimately, they said that the most
9 preferred route, if it had to stay on their property,
10 would be paralleling those existing pipelines.

11 In the meantime, with all the discussions
12 on that property going months and months and months --
13 and, again, there was, from my understanding, a verbal
14 commitment that they thought they were going to be
15 able to work something out and to get an easement
16 signed, that -- you know, we were securing easements
17 on all sides of that property.

18 And upstream and downstream I think we have
19 almost ten miles of continuous easements signed with
20 one exception, which is the Charles City Development
21 property. Again, we've done everything we can to try
22 to accommodate them and work with them, and ultimately
23 decided that putting it at -- you know, paralleling
24 the two existing pipelines was the most favorable spot
25 for them and what they told us. And I know there's a

1 lot of people involved on that board and there's
2 probably different opinions of that.

3 Q. So, knowing that the Charles City
4 Development Corporation, if that's the proper title,
5 owned that land and wanted to develop it and didn't
6 want a pipeline there, you went ahead and acquired
7 land on both sides prejudicing the decision about what
8 to do with that development property; correct?

9 A. Again, you know, there was conversations
10 over an extended period of time. We fully believed we
11 would be able to come to a mutually agreeable solution
12 on the route and the placement and the pricing and
13 everything. And, again, it was kind of back and forth
14 that entire time.

15 And so the route was placed there following
16 existing infrastructure. There's MidAmerican
17 pipelines going right up into the middle of
18 Charles City with development all around them. So
19 those pipelines have not precluded development.

20 You know, they obviously bought that
21 property with two existing pipelines crossing it. So
22 they understood that -- they obviously thought that
23 pipelines would not stop development. So there's a
24 lot of different things that were involved with that
25 property. And, you know, we're hopeful that we can

1 work something out with them.

2 Q. So, in your view, a pipeline is a pipeline.

3 A. You know, a PHMSA-regulated pipeline built
4 to a certain design/construction/operation standard,
5 to me, is very similar no matter what the commodity is
6 going through it. I mean, obviously each commodity
7 has its own specific design criteria, et cetera, but
8 pipelines, to me, are very similar, you know, if
9 they're built to those same standards.

10 Q. Well, do you think there is some reason why
11 a carbon dioxide pipeline is called a hazardous
12 pipeline?

13 A. I can't speak to exactly why it was called
14 hazardous. It falls under the hazardous liquid
15 pipeline standards for PHMSA.

16 MR. TAYLOR: Thank you. That's all the
17 questions I have.

18 BOARD CHAIR HELLAND: Thank you.

19 Okay. As luck would have it, Farm Bureau
20 is next. And I assume you've got more than 23 minutes
21 worth of questions?

22 MR. MEYERS: That is correct, Chairperson.

23 BOARD CHAIR HELLAND: Okay. Unless any of
24 the parties are vehemently opposed to it, I think it
25 probably makes more sense to break now and then go to

1 confidential and let Farm Bureau pick up tomorrow
2 rather than break your questions over a day.

3 MR. MURRAY: Your Honor?

4 BOARD CHAIR HELLAND: Yes, sir.

5 MR. MURRAY: My questions are going to last
6 about five minutes and I'm not allowed in
7 confidential.

8 BOARD CHAIR HELLAND: Oh. Gotcha. Go for
9 it. Mr. Murray.

10 MR. MURRAY: Thank you.

11 CROSS-EXAMINATION

12 BY MR. MURRAY:

13 Q. My questions focus on routing as well.

14 Okay?

15 A. Okay.

16 Q. As I understand it, Iowa Farm Bureau's
17 witness Johnson has a chart showing that there's about
18 687 pipeline miles in Iowa.

19 Would you agree with that statement?

20 A. For our project in particular?

21 Q. That's right.

22 A. Yes, that's generally right.

23 Q. And your chief operating officer,
24 Mr. Powell, testified that Summit does not intend on
25 amending the application as to route.

1 Would you agree with that statement also?

2 A. Yes.

3 Q. I think -- correct me if I'm wrong as to
4 Summit's position, but is it that Summit's proposed
5 route is the one and only route that Summit is
6 proposing unless the IUB orders otherwise?

7 A. You know, if the IUB orders that we make a
8 change in the route, certainly we would accommodate
9 that.

10 Q. Iowa Code Section 479B.5 states that "A
11 petition for permit shall state all the following,"
12 and the sixth subsection states "The possible use of
13 alternative routes."

14 Can you confirm today Summit's petition to
15 the IUB shows no possible alternative routes over the
16 687-mile pipeline? Is that Summit's status of its
17 petition today?

18 MR. LEONARD: Objection, Your Honor.

19 BOARD CHAIR HELLAND: State your objection.

20 MR. LEONARD: Misstates the content of the
21 petition and its exhibits.

22 BOARD CHAIR HELLAND: Mr. Murray, can you
23 rephrase?

24 BY MR. MURRAY:

25 Q. Please state Summit's petition inclusions

1 as to alternative routes.

2 A. So the existing pipeline alignment is the
3 route that we're seeking a permit for with the IUB.

4 You know, certainly early on in the routing
5 process there were different route alternatives
6 considered. There was, you know, an analysis done
7 with our GIS consultant to look at those high level
8 before the preliminary route was established and our
9 corridor was established.

10 Outside of that, I can't speak to any other
11 kind of alternative analysis that's been proposed to
12 the Board.

13 BOARD CHAIR HELLAND: Mr. Schovanec, I know
14 it's difficult when you're sitting right between the
15 two of you, but just speak into the mic phone. Go
16 ahead and look at Mr. Murray, but we just need to be
17 able to hear you.

18 BY MR. MURRAY:

19 Q. So, as it relates to minor or major route
20 changes, is there anything that is specifically
21 proposed to this Board as alternatives?

22 A. Not that I'm aware of.

23 Q. So I guess I'm trying to understand -- and
24 maybe I can rephrase my question here.

25 Can you confirm today that Summit's

1 petition to the IUB shows no specific possible
2 alternative routes?

3 MR. LEONARD: Objection.

4 BOARD CHAIR HELLAND: State your objection.

5 MR. MURRAY: I believe that this
6 individual -- I'm sorry. I've got to wait, don't I.

7 MR. LEONARD: Same objection. Also,
8 objection as to legal conclusion. I'd also suggest
9 that here today is not the petition that was filed
10 months and months ago.

11 BOARD CHAIR HELLAND: Mr. Murray.

12 MR. MURRAY: I believe this witness has
13 testified as to the fact that there are no specific
14 alternative routes. I just want to confirm that those
15 alternative routes that are not specifically
16 identified are also not within Summit's petition if
17 the witness has any knowledge of that.

18 A. The existing alignment is the only route
19 that is part of our petition.

20 MR. MURRAY: Thank you. I have nothing
21 further.

22 BOARD CHAIR HELLAND: That was exactly five
23 minutes.

24 MR. MURRAY: How about that.

25 BOARD CHAIR HELLAND: So we will rest with

1 Farm Bureau and push Farm Bureau until tomorrow
2 morning. We'll start right off with you at 8:00.

3 For right now, let's go ahead and take a
4 17-minute break until 3:30 and then we will come back
5 to Mr. Pirolli in confidential session. And so we
6 will need to identify and remove all those who are not
7 covered by an NDA.

8 MR. JORDE: Your Honor, I have a question
9 on that. For anyone that isn't presently covered by
10 an NDA, is there a mechanism for them to sign an NDA
11 and become a covered person or party?

12 BOARD CHAIR HELLAND: Good question. You'd
13 have to talk to Summit.

14 MR. JORDE: Okay.

15 BOARD CHAIR HELLAND: Do we have a
16 mechanism to do that efficiently or quickly?

17 MR. LEONARD: I could certainly email one
18 right now.

19 MR. JORDE: Well, I guess what I'm getting
20 at is obviously counsel who have already signed it
21 have got it. What I'm saying is for people that
22 aren't counsel that are willing to be bound by
23 confidentiality, what about that?

24 MR. LEONARD: The offtake agreements,
25 pursuant to the Board's order, are subject to

1 attorney's eyes only. So only attorneys can view
2 them. Attorneys on behalf of the parties.

3 MR. JORDE: So no parties are able to see
4 them. I guess that would be my objection. That it's
5 the parties' case, not the lawyers' case. So, if
6 we're going to be having a mechanism to discuss them
7 in confidentiality, I think any party should be able
8 to subject themselves to the NDA and be a part of that
9 process.

10 MR. DUBLINSKE: Your Honor, I think that
11 there's good reason that was established that led the
12 Board to agree to an attorney's eyes only condition.
13 There are certainly ethical restrictions on attorneys
14 and certain consequences for attorneys that provide an
15 additional layer of protection that the materials
16 being discussed merit and warrant. And that is a
17 critical part of the agreement that Summit was willing
18 to enter and entered with the represented parties.

19 BOARD CHAIR HELLAND: Okay. Thank you.

20 Objections and comments are noted. I think
21 we already addressed it in our Board order.

22 So we will be back at 3:30.

23 (Recess taken at 3:14 p.m.)

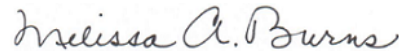
24 (Pages 2110 through 2203 are contained in
25 the Confidential portion of the transcript.)

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the proceedings in the above-entitled matter at the time and place indicated; that I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated this 23rd day of September, 2023.



CERTIFIED SHORTHAND REPORTER
Melissa A. Burns, Iowa CSR #527

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