

Commissioner Nelson
Commissioner Hanson
Acting Commissioner Haeder

Re: HP22-001

Commissioners:

I attended the March, 2022 open meeting in Sioux Falls regarding HP22-001 pipeline and spoke at the meeting. Commissioner Nelson asked me to respond to several issues.

The first issue was 100% return of land productivity after three years. In 2016 Dakota Access forced an easement on our land by suing us under eminent domain. The land is 118.36 tax base acres. It has always had a rotation of corn and soybean row crops. The rows run north to south. There were 7.96 surveyed by Dakota Access pipeline acres. The pipeline acres run diagonally across the field. The only way to obtain the yield data you are requesting would have been in 2016 and onward to combine the acres as a test plot and then to combine comparable acres next to it. You would need to weigh the two to get a comparison on yield loss. This could not be done in the corn years of 2016, 2018 and 2020 because we cannot combine corn diagonally. It could have been done in the soybean years 2017, 2019 and 2021. To do this would have taken extra time at harvest and we had no reason to do. Not in a million years in 2016 would we ever have thought a CO2 pipeline would be built and run along the oil pipeline. We had spent thousands of dollars on attorney's fees to trying to save our soybean seed business by expanding and protect our land from liability. We lost and had to deal with what we had.

I do have production records for the entire field but because of other variables you cannot pinpoint pipeline loss. We do not plant the same hybrid with the same maturity date or even the same trait every other year. Also the weather is a large variable. I do not know of two years that you have the same rainfall, heat units, wind or hail.

I am sending you yield graph maps. 2016 shows a white streak on the right side which is the pipeline acres and work area we could not plant. I have outlined the pipeline and work area on maps 2017-2020. 2021 was the sixth year but the program on the combine was not working so I do not have a map from that year. In 2019, the fourth crop year, it is apparent on the yield map of yield loss on the pipeline route.

My husband has been a row crop farmer for 50 years. He has been in the seed business for 45 years and has checked crops for yield damage from stalk quality, insects, chemical, hail and other damages. As he told me, you can just eyeball it. The corn is shorter and the ears are shorter. The soybeans are shorter and they have fewer pods. When you combine the yield monitor goes down.

We don't know if it's from compaction, mixing of the soils, or heat from the pipeline. Summit at the Sioux Falls meeting put on the screen a nice picture up showing separation of topsoil. Summit will not be putting in the pipeline. As Dakota Access, they will hire independent contractors at the lowest bid. All the workers on our land were from Wisconsin, Ohio and Texas, not South Dakota. A landowner cannot be on the land or take pictures in the process of the pipeline so you have no idea what they are actually doing. They keep going in rain and unfavorable conditions because their only concern is "time is money". August 5, 2016, I did get a few pictures by standing on a gravel road on the north side of the pipeline which I have enclosed.

Compensation to the landowner or farmer is for three years of crop loss that declines over time. No peer reviewed scientific study was ever presented that shown this to be adequate in terms of amount or time. **I believe the Commission needs to require Summit to produce such research for different types of land in South Dakota to ensure landowners and farmers are being adequately compensated for loss of productivity.**

The second issue that was brought up to me at the Sioux Falls meeting is liability to the landowner and farmer. This has been my primary focus and concern regarding pipelines that carry hazardous materials. Summit representatives told me that night that there is an indemnification clause in the easement which takes care of this. The following is the clause they were referring to:

Indemnification. Company agrees to indemnify and hold Landowner harmless from and against any claim or liability of loss from personal injury or property damage resulting from or arising out of the use of the Easements by Company, its servants, agents or invitees, excepting, however, such claims, liabilities or damages as may be due to or caused by the acts of Landowner, or its servants, agents or invitees.

It was reported in the Aberdeen American News Farm Forum dated April 8, 2022, that after the open meeting held in Aberdeen, SD, Chris Hill, Summit's Director of Environmental and Permitting, told the Aberdeen American News after the meeting that Summit would take on full liability to any damage done to the pipeline unless the damage was caused on purpose. That is not what Summit's own indemnification clause says. It does not say unless the damage was caused on purpose. It excepts acts of Landowner, or its servants, agents or invitees. The pipeline is only four feet deep and could be accidentally hit in the normal business practice of farming.

The clause appears to be silent as to liability if the damage is caused by a third party. What if it was neither the Company nor the Landowner that caused the liability? What if it was the state, county or township? Are they considered servants, agents or invitees? What if it was a third party doing it as a protest or crime? What if it was act of God such as a lightning strike or flood? Even if Summit could meet any potential liability obligation, Summit can sell the pipeline to another company at any time without consideration if the new entity would be able to meet the liability obligations.

The third issue at the meeting was Commissioner Nelson asked Summit to address me about my concern on whether the CO2 captured by Summit would be used for enhanced oil recovery. Summit said that night that it would not be. I attended an informational meeting held by Summit on October 27, 2021, in Tea, SD. At that meeting Summit was asked if they could guarantee the CO2 would not be used for enhanced oil recovery or fracking. They said that they didn't have any intention to, but they could not guarantee it and would have to look at other options after tax credits end. After Summit saying that it would not be used for this purpose even if there was no other CO2 source for North Dakota oil drillers, would Summit be willing to sign a written agreement with the SD PUC stating the CO2 transported will not be used for fracking or enhanced oil recovery. Otherwise, there would be no purpose for the pipeline.

In the Guide to Siting Pipelines written by the SD Public Utilities Commission it states that the Applicant (Summit) "will not pose a threat of serious injury to the environment nor to the social or economic condition of inhabitants or expected inhabitants in the siting area". I believe it does pose an economic and liability risk for the following reasons.

1. Summit has not shown through scientific data or study that the productivity of land fully returns in three years. I have shown that it is question whether 100% productivity returns. Summit pays the landowner for a percentage of what they think the loss will be in three years. It is a one lump payment which can put a landowner in a different tax bracket that they wouldn't normally be in. It is not adjusted for inflation. The landowner has unlimited liability exposure for the entire life of the easement with no compensation or insurance.
2. Summit needs to provide scientific data or studies to show that the landowner doesn't lose market value. For example, if there are two pieces of land for sale that are close in proximity and have approximately the same soil and productivity ratings. One has the liability of an oil and CO2 pipelines and the other has no pipelines. Common sense tells you which piece of land you would rather buy and has a greater market value. Or we could use our 118.36 acre land. According to recent sales in the area the market value would be around \$1,490,000. If there were an oil leak and/or CO2 rupture on this land we would lose a considerable amount of market value. 25% would be \$372,500 or even just 10% would be \$149,000 but it could be much more. In 2020, there was a DAPL pipeline leak less than a quarter of a mile from our property so it does happen. We basically have an ongoing liability risk for as long as the pipeline is in place, but no revenue or insurance to mitigate that risk. That is another reason it decreases the value of the land. In a true free market condition (no threat of eminent domain) the Company would have to pay an "annual fee" for this ongoing risk.
3. Landowner has the expense for attorney's fees to negotiate an easement that protects them. Eminent domain should never be use for private financial gain and as a hammer to force the landowner to agree to terms of an easement that they would not otherwise

agree to in a free market. Landowner may incur future legal expenses if there is a liability claim.

4. Summit or future owner can abandon the pipeline whenever they want without removing it or any residual hazardous waste. The future removal or upkeep is the expense of the landowner with no compensation.

According to the SD PUC Guidelines quoted above, Summit is the Applicant and **Summit has the responsibility to provide scientific studies, research and data , not talking points, to prove that the productivity of the land returns 100% after three years. They need to provide proof that the landowner has no liability risk and that the market value of the pipeline does not decrease compared to land with no pipelines.**

Sincerely,

Nancy Stofferahn
Encs.