
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE
APPLICATION BY SCS CARBON
TRANSPORT LLC FOR A PERMIT TO
CONSTRUCT A CARBON DIOXIDE
TRANSMISSION PIPELINE**

HP22-001

**INTERVENORS
SCOTT FRANCOLI,
MARTY FRANCOLI, AND
JANELL EGGERS
INITIAL PRE-FILED TESTIMONY
IN OPPOSITION TO SUMMIT'S
APPLICATION**

Q: Please state your name.

A: We are Scott Francoli, Marty Francoli, and Janell Eggers. We provide testimony here on our own behalf as well as for the Francoli Family Limited Partnership.

Q: Do you either personally own or lease land or are you a fiduciary for or member or beneficiary of any entity that owns or leases land or real property in South Dakota, that you believe would be negatively affected by the proposed Summit hazardous CO2 pipeline (hereafter "proposed hazardous pipeline")?

A: Yes.

Q: For the land discussed here that would be affected and impacted by the proposed hazardous pipeline, give the Commissioners an understanding of how long the land has been in your family including a little history of the land and its importance to you.

A: The land has been in our family for over 80 years. Our Grandfather purchased the land back in 1941. Our Grandfather farmed the land, and our mother helped him especially when her brother served in the Army. This land was then given to our mother and later put in the Francoli Family Partnership. Our mother has always shared this land with her brother and then with her nephews and their families. It is still being shared and farmed by them today.

Q: Do you depend on the income from your land to support your livelihood or the livelihood of your family?

A: Yes, we have always depended on the income from the land to help provide for our family. The income from the land has provided for grandfather and grandmother, our mother and father and us as children when we were growing up. We are now dependent on the income to provide for our parents. When both our parents reached their 90's and they stayed with my sister, we depended on that income from the land to help cover the in-home care for them. When our mother passed away, we moved our father to a long-term care facility, and we now depend on that income to help cover the costs of his care in that facility. Since the land is 100% crop land and we crop share with our cousins, they also have depended on the crops to help provide for their families as well. They have also used the corn from land to provide feed for their cattle operation. If the PUC approves Summit's Application, it will drastically have a negative economic impact and reduce the income we can generate from the land to help cover the costs of our father's care.

Q: As far as you know, does Attachment No. 1 purportedly depict Summit's "preliminary route" and preliminary permanent easement and other easements they desire across your property for pre-construction, construction, maintenance and operation of their proposed hazardous pipeline on, under, across, over, and through the land described?

A: As far as I know, yes. This is what they refer to as "**Exhibit B**" to their proposed Easement and is the best estimation we have been provided or able to obtain. However, as described this appears to be preliminary and not final. We don't "know" what the final proposal is or isn't or exactly how much land and the location of all the negative impacts should the PUC approve this project to cut across my land. They have not confirmed specifically and exactly what permanent, temporary, access, and other easements and property rights they seek on our land, and it appears they believe they have the power to unilaterally and at any moment move and or expand the perpetual and "temporary" easements they seek. The uncertainty around

this is troubling and it seems they are seeking permission from the PUC for the idea of a route rather than a final route.

Q: As you analyze Summit's proposed "preliminary" route and easements across your property, as depicted Attachment No. 1, please describe your property and its particular features and characteristics such that the Commissioners will be able to understand why digging, trenching, constructing, and operating a hazardous CO2 pipeline across your property is challenging or simply a bad idea in your opinion.

A: Our land is 100% crop land and we depend on the income from the crop shares on that land to provide care for our father.

In the proposed permanent easement agreement by Summit a twenty-four inch (24") pipeline with fifty feet (50') easement will be going through the land at an angle almost the whole quarter's length. There will also be temporary easements and temporary construction easements that will be at least another fifty feet (50') along almost the whole pipeline easement and in some places an extra one hundred fifty feet (150'). We will lose more crop land than is showed in the easement map due to the angle of the pipeline on the map and having to stay away from the construction site. Summit is only going to compensate for the damages up to three (3) years following initial construction of Pipeline facilities. The landowner then must release and forever discharge the Company (Summit) from all such damages. We do not believe that Summit or its third-party contractors will be able to live up to their claim that the land will be returned to as good or better condition as they found it post-construction. Once you disturb the top soil and bring up clay it will compact and yield less over time. This means a decrease in yields and a continuation of loss of income from the crops that are produced on the land.

There is also a surface easement agreement on our land which includes a valve easement and access easement to the valve. This valve and access easement is permanent and will have to be farmed around. Summit has the right to fence and enclose the Valve easement for the Summit's sole access and to fence any of the

valve facilities in separate enclosures. The land that we will lose will be more than the valve and access easement shows because it will be fenced in and it will have to be farmed around forever.

The current pipeline route is crossing the James river and goes across our cousins' land before it enters into our land. The pipeline that is going across our land is too close in proximity to our cousin's home and their feedlots. The pipeline also comes up out of the hillside of the James River in land that is considered to be unstable for the pipeline. There was construction manager from Summit and he agreed with the conclusion that this is unstable land. This hillside has a history of sluffing which will increase with construction. This is a big safety concern of ours for our cousins' lives and livelihood. One would think that Summit would be concerned for the safety of the landowners and would move their pipeline far enough away from where the farmers live and have their livestock. It would certainly reduce their risk of indemnification.

If the PUC approves Summit's proposed route, they therefore authorize Summit's proposed easements near or potentially on our land as well as force upon us all the terms of Summit's easement forever. These potential actions by the PUC would have a permanent – forever – negative effect and impact on our land as well as our financial future, and on the economy of our county and State.

Q: What is your understanding of the Public Utilities Commission's (PUC) role related to this proposed hazardous pipeline?

A: Based on information provided in a PUC document entitled "South Dakota Public Utilities Commission Information Guide to Siting Pipelines" which is included here as **Attachment No. 2**, and my participation in these matters, I understand the PUC has the power to approve or deny Summit's Permit Application. If approved by the PUC, Summit would be able to forever route and site its proposed hazardous pipeline on, under, through, over, and across my land in question here and conduct any pre-construction, construction, and post-construction activities they deem necessary at any time, forever, that it wants without my permission. If the PUC were

to approve the Application and the route approved crossed any portion of my land, I would then be subject to an easement agreement which restricts what I can do on my land and how I, my tenants, invited persons, and all future generations can conduct ourselves on the land – forever. An approval by the PUC is the trigger for Summit to condemn my land using eminent domain powers to which I am opposed. So, the PUC has in its hands whether or not me and all future generations who seek to use, develop, and work the land in question as we see fit will be unwillingly subjected to unwanted and restrictive permanent easements preventing us from doing so and subjecting us to liability and risk. The PUC’s actions, if approval of the Application, would also negatively impact our economic future forever. The PUC has my and this lands entire future in its hands.

Q: Have you heard or read that the PUC has nothing to do with easements or similar claims?

A: Yes, and that is logically and practically an incorrect assertion. Can you have a pipeline route without easements? The answer is no – a pipeline route is simply a series of connected easements – that’s what a route is. This pipeline will not be built without PUC Approval and easements. If and only if the PUC approves this hazardous pipeline application will my land and all future owners, tenants, and visitors to my land be negatively affected by pipeline easements, access easements, work space easements, and all the limitations, restrictions, dangers, and risks associated with those easements and what this proposed hazardous pipeline company and its future owners can do on my land and prevent me from doing on my land. No PUC approval means no unwanted easements and no unwanted property right transfer from me to the hazardous pipeline company. You cannot separate what the PUC is doing in this proceeding with the taking of my property rights. PUC approval is a vote by this Commission that it is okay for my property rights to be taken and forever affected against my will and for the benefit of the proposed hazardous pipeline and for the economic gain of its wealthy investors.

Q: And what about the condemnation piece – the PUC says it has nothing to do with condemnation have you heard that and if so, what do you think?

A: I have heard that claim but again, same logic as above – no PUC approval means there is no project and no economic incentive to attempt to use eminent domain powers to condemn my land and my property rights. Only if the hazardous pipeline wanted to intimidate and scare me or send me a “message”, or if they were so confident that this process is a rubber stamp for them would they start condemnation actions before the PUC officially approved the route. But even if they would start condemnation prematurely, they would not go through the entire process and trial and the ultimate final taking of my rights unless the PUC approved their Application, so no PUC approval means there will not be a final forever taking of my land or property rights.

Q: What should the PUC consider when assessing how the proposed hazardous pipeline will directly affect your land and property rights?

A: In addition to what I have already discussed, you cannot have an intelligent consideration of a Route Application without reviewing Summit’s proposed Easement Agreement (herein referred to as the “Easement”) with a fine-tooth comb. This is the document that is part and parcel of a PUC Application approval. When you think about what a Pipeline Route is you conclude it is simply a long-connected chain of many Easements – no easements, no route. It is important to me that the PUC review this document in detail, understand the implications, and then consider all the implications relative to my land and property and how it is being used now and thinking into the future – forever – of how a PUC approval would therefore affect my land and my family. Each and every factor, as discussed in **Attachment No. 2**, is implicated by the Easement. A true and accurate copy of an example South Dakota Summit “Easement Agreement” is included here as **Attachment No. 3**. The provisions and terms found in this exemplar are consistent with what has been presented to me.

Q: Please walk through the Easement and highlight your major concerns so the Commission can understand how their approval of Summit's Application would affect you forever.

A: Well, the first question and concern I have is the company that would have perpetual rights in my land is identified as Summit Carbon Solutions, LLC, a Iowa limited liability company with its principal office in Ames, Iowa.¹ I have tried to determine who owns this LLC and what its assets are but I can't figure it out and I am very concerned that the PUC could force this LLC upon me and no one knows who is behind the LLC curtain. Summit has refused to disclose the hidden layers of LLC member entities so that it is a secret who Summit really is and the PUC has no idea who it is dealing with. If I am forced against my will to have a co-owner of my land via Summit's desired perpetual easement against my land to do as they see fit within the easement language, then I want to know exactly who I am dealing with and the PUC should require the LLC to reveal its owners and investors and if those owners and investors are also entities the PUC should require transparency **at every level of ownership** so we ultimately know the real people behind this newly formed for-profit private company. When looking up Summit Carbon Solutions, LLC on the Iowa Secretary of State website it states the LLC was formed on June 28, 2021 – and it says it is a Foreign Limited Liability Company and that the actual state of incorporation is Delaware not Iowa as the Easement suggests. This Iowa Secretary of State search also reveals these companies that appear to be related:

¹ See page 1 of the Easement

Business Entities Results

 [print](#)

Searched: **Summit Carbon**

Results 1 - 6 of 6

<u>Business No.</u>	<u>Name</u>	<u>Status</u>	<u>Type</u>
677862	SUMMIT CARBON CAPTURE III, LLC	Active	Legal
677575	SUMMIT CARBON CAPTURE II, LLC	Active	Legal
671355	SUMMIT CARBON CAPTURE, LLC	Active	Legal
700745	SUMMIT CARBON PROJECT HOLDCO LLC	Active	Legal
646300	SUMMIT CARBON SOLUTIONS, LLC	Inactive	Legal
677150	SUMMIT CARBON SOLUTIONS, LLC	Active	Legal

When you then turn to the Delaware Secretary of State business entity search, it reveals these entities:

FILE NUMBER	ENTITY NAME
4931823	SUMMIT CARBON CAPTURE ALASKA, LLC
5004361	SUMMIT CARBON CAPTURE HOLDINGS, LLC
5004363	SUMMIT CARBON CAPTURE, LLC
5644331	SUMMIT CARBON HOLDINGS, LLC
6494069	SUMMIT CARBON PROJECT HOLDCO LLC
5927410	SUMMIT CARBON SOLUTIONS, LLC

What we have learned from the North Dakota PSC Summit proceedings is that as of May 9, 2023, these entities owned some or all of SCS Carbon Transport LLC, which is the North Dakota PSC Applicant and the South Dakota PUC Applicant: Summit Agriculture Group, SK Group, Tiger Infrastructure Partners, TPG Rise Climate, and Continental Resources, Inc.

Q: What is your next concern the PUC should be aware of?

A: Summit’s Easement refers to not only it as the “Company” involved but the defined term “Company” also includes any and all of Summit’s unknown “successors and assigns.” This means if the PUC approves Summit’s Application it is automatically approving any future unknown person, entity, country, or foreign sovereign wealth fund – including potentially countries and interests adverse to South Dakota and the

United States – to be my unwanted partner in my land – forever. I have no vote, no power, and no say-so.

Q: What is your next concern the PUC should be aware of?

A: Summit’s Easement states that we, as “Landowner” “hereby grants, sells and conveys unto Company [Summit and all future unknown successors and assigns], for use by Company and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it, the following easements...”² Again, we are not forced to deal only with Summit – because the Easement says any unknown “agent, employees, designees..” etc. can use all the easements described.

Q: What is your next concern the PUC should be aware of?

A: Summit’s desired easements on my land are all shown as “approximate locations” so no one really knows the actual location or size of their desired easements and taking on my land and I don’t believe the PUC should approve an “approximate” route – they should evaluate a precise route, so this process is completely transparent.

Q: What is your next concern the PUC should be aware of?

A: Summit’s desires several easements, one is referred to as “Pipeline Easement” and it is to be “fifty feet (50’) in width” and “free and unobstructed” and “permanent.” I can’t understand why Summit should be approved by the PUC to have a “permanent” easement when they are not proposing a permanent or forever project. Also, the fact they demand a “free and unobstructed” easement calls into question what we can do on and across the easement forever.

Q: What is your next concern the PUC should be aware of?

A: Summit states in their Easement that they can use the desired “Pipeline Easement” for “the purposes of owning, accessing, surveying, establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing,

² *Id.* Para 1 Grant.

improving, substituting, operating, inspecting, maintaining, repairing, patrolling, protecting, changing slopes of cuts and fills to ensure proper lateral and subjacent support for and drainage for, changing the size of, relocating and changing the route or routes of, abandoning in place and removing at will, in whole or in part, one pipeline not to exceed twenty-four inches (24") in nominal diameter..." I want the PUC to understand that evaluation of the factors found in **Attachment No. 2** must be analyzed considering Summit can permanently and forever not only locate a hazardous pipeline on my land but also at anytime and forever access, survey, modify, patrol, cut and change the contours and slopes of my land, change and relocate the pipeline route, and abandon the pipeline in place, all on my land and without any permission or say-so from me or future owners. These rights alone, and we are still in the first paragraph of the Easement, not only poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. All of the above uses they want are "for the transportation of carbon dioxide and its naturally occurring constituents and associated substances and any appurtenant facilities above or below ground, including aerial markers, power drops, telecommunications, cathodic protection, and such other equipment as is used or useful for the foregoing purposes ..." ³ So, while they are marketing now the transportation of Carbon Dioxide, they have the wiggle room to change that at anytime to anything that could fit under "and its naturally occurring constituents and associated substances..." Where are the limits? I thought this was a CO2 pipeline only. If the PUC were to approve this Application, which it should not, it must limit what can be transported in this hazardous pipeline. Clearly, not knowing the limitations of what could be flowing on, under, through, and across my land also poses a threat of serious injury to my social and economic

³ *Id.* para 1.a.

condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. They also can place any facility and equipment of any kind above the ground or below ground on my land so long as Summit deems it “as is used or useful for the foregoing purposes” which covers any and everything they choose to do.

So, it appears what they would be able to do with the Pipeline Easement includes about everything and there are no time limitations, restrictions, or notice requirements as to any of these activities. Should the PUC approve this hazardous pipeline, which it should not, it should require reasonable limitations as to when these activities can be performed, for how long, and should be required to notify landowner well in advance of any such activity or entry onto landowner’s land. Further, Summit’s desired right to abandon in place their hazardous pipeline on my land must not be allowed. Should the PUC approve this hazardous pipeline, which it should not, it should require Summit, at landowner’s sole request, to remove the pipeline. If a landowner does not request this or if Summit and a particular landowner reach agreement and financial terms allowing the hazardous pipeline to remain, that should be up to each landowner. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers and the threat and ability to abandon the pipeline in place poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: The Easement language and powers are far too vague and wide ranging, again no limitations and these roving rights Summit would claim subject me and my property to significant restrictions as their rights dominate mine; this will prevent me and future owners and users of my land from improving and developing the land in the ordinary course. These restrictions have negative economic impacts now and into the future. I will not be able to increase the value and usable features on my land

and will not do so in fear of having to remove any such desired improvements or be subject to Summit's claims my desires interfere with their Easement rights. The less I can improve my land, the less valuable it is, the less real property and personal property tax is generated, and the more South Dakota is harmed.

Q: What is your next concern the PUC should be aware of?

A: The second easement Summit seeks is a "Temporary Easement." However, there is no definition of how long this can be and it only terminates "on the Company's delivery to Landowner of written notice of termination..." If the PUC were to approve this Application, which it should not, in addition to locating a hazardous pipeline on my land Summit reserves the sole right to also locate upon my land and use temporary construction areas and additional temporary workspaces areas. There is no limitation on how large these can be and there is no limitation on what "temporary"⁴ means. How long is temporary? How long would Summit be able to argue "temporary" is all the while prohibiting me from using my land how I see fit.

Q: What is your next concern the PUC should be aware of?

A: The next easement sought is an "Access Easement" which again is a "free and unobstructed" easement "in, to, through, on, over, under, and across" my land forever "for the purposes of ingress and egress to the Pipeline Easement..." and to the "Temporary Construction Easement and for all purposes necessary and at all times convenient..." to Summit. So, if the PUC approves this Application, which it should not, Summit gets a blanket easement and access across my entire property forever that I have to keep "free and unobstructed." This means I cannot locate equipment, livestock, or anything that could hinder Summit's unrestricted total access of my land. Summit would take a forever right to travel anywhere it desires on my entire Property – not just within the Easement area. This ability to have free reign on a landowners' entire property reduces the value of the property and chills my desire to economically improve my property which again is a detriment not only

⁴ See para 1.b. of the Easement

to me but to the entire State in lost tax revenue. Such unilateral powers and the forever restrictions upon my land and me and all future generations poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit unilaterally can determine the final location of the pipeline and it does not have to be in the middle of the easement: “the centerline of the pipeline may not, in all instances, lie in the middle of the Pipeline Easement.” See Easement paragraph 2 “Location.” To make matters worse – should Summit chose to change location, Landowner then, at their time and cost, has review, execute, and deliver to Summit any correct documents or any modifications that Summit requests. See Easement paragraph 2 “Location.”

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit seeks to limit the compensation available for all the easements and any other damages that Landowner would suffer up and until the time of Summit’s restoration of our land following pipeline installation. Additionally, Summit seeks to cap damages to growing crops and yield loss for the three years following the initial construction of the pipeline. Summit claims it will pay Landowner “a reasonable sum” for any “subsequent actual, proven damages to growing crops...” but there is no mechanism or metrics of how this would work. My research shows that previous Landowners have had difficulty getting compensation for damages caused by pipeline construction and given yield loss can continue decades into the future this provision should concern the PUC. These provisions and limitations pose a threat of serious injury to my social and economic condition.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit does not have to repair or restore my land to as good a location or better as it found it as that claim in promotional statements. In fact, Summit only has to restore my land “insofar as reasonably practicable...” as solely determined by Summit. See Easement paragraph 4 – “Restoration.” Should there be a dispute in this regard, Landowner would have to incur more costs, expenses, and wasted time hiring legal counsel and perhaps experts, and likely litigating the matter. Therefore, these provisions and limitations pose a threat of serious injury to my social and economic condition.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit would have the unilateral power to tell Landowner what they can and can’t do on all of the easements. If anything, that Landowner wants to do on their property above the surface of where the pipeline or any easement is located that in Summit’s “sole discretion” “causes a safety hazard or unreasonably interfere[s]” with Summit’s rights, then Landowner is prohibited from taking such action. See Easement paragraph 5.a. – “Landowner’s Use.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, I cannot, unless previously being given permission by Summit, construct anything on the easements, cannot drill or operate any well or equipment for production or development of minerals, cannot remove soil or change the grade or slope of my land, cannot impound surface water, and cannot plant trees or place landscaping. Landowner also cannot place any above ground or below ground “obstruction” of any kind that Summit may deem to interfere with or be inconvenient to operation of the pipeline

or other Pipeline Facilities or use of the Easements without written permission from Summit – which they can withhold. See Easement paragraph 5.b. – “Landowner’s Use.” Worse yet, if I do utilize my property as I see fit, and Summit in its sole discretion determines any such actions in any way “...interferes or may interfere with its right...” then Summit “shall have the immediate right to correct or remove such violation or obstruction at the sole expense of Landowner.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Landowner is prohibited “during the initial construction of the Pipeline Facilities or any construction, maintenance, repair, replacement or removal work on the Pipeline Facilities...” from using any portion of the Easements for any purpose. See Easement paragraph 5.c. – “Landowner’s Use.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, I am prohibited from using my land for agricultural and pasturage purposes if they are in anyway interfere with Summit’s use of the Easement. So, assume Summit where to bury its proposed hazardous pipeline only four (4) or five (5) feet below the surface, then I can’t use any equipment with tires four (4) or five (5) feet in diameter or larger in my operations for fear if I would sink, the tires could come in contact with the pipeline. Preventing my ability to stay competitive and utilize larger equipment to work my land negatively impacts me by not allowing me to be as efficient as

possible and reduces my profitability. There is no reason for me to keep buying the newest and latest equipment which hurts local businesses. All of this has a negative impact on the State's economy and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit has the sole and exclusive "right to sell, assign, apportion, mortgage or lease this Agreement [the Easement]..." otherwise transfer this Agreement in whole or in part..."⁵ If Summit exercises any of these rights and some unknown and unwanted party becomes the owner of the Easement on and pipeline and equipment on my land, not only do I have no say-so. Additionally, if Summit sells or assigns any part of the Agreement or the Easements to anyone else, then Summit "... shall be released from its obligations under this Agreement." All of this has a negative impact on the State's economy and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. If the PUC were to approve this Application, which it should not, it must require any new entity that would become owner or operator of this hazardous pipeline to first apply for and be granted permission to take this project over from Summit. Assignment to any unknown person, company, or government could have terrible impacts upon all of South Dakota depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future. This concerns me because it would allow my easement to be transferred or sold to someone or some

⁵ See paragraph 7 of the Easement

company or country or who knows what that I don't know and who we may not want to do business with.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, the liability and insurability aspects of this hazardous pipeline being forever located on my land are very concerning. See Easement paragraph 6 – “Indemnification.” Summit says it “shall pay commercially reasonable costs” for damages resulting from their use of the Easements. Why don't they pay any and all costs if there is damage resulting from their use of the Easements? Who determines what “commercially reasonable” means? I doubt I do. How much expense and time and frustration does Landowner go through fighting for payment of actual damages? The Easement also states that Company (Summit) shall indemnify and hold Landowner harmless for damages resulting from their use of their easements. Summit has acted as if this is a big concession – that they should be responsible for the damage they cause. However, their indemnification and hold harmless language does nothing at all to protect Landowner from any claim – a mere claim – that Landowner or its agents (tenants or others) acts of gross negligence or willful misconduct within the Easements caused damage. And there is no protection at all for any claims that Landowners or their agents took any action outside the Easements that may have caused issues within the Easements that then lead to damages or losses. Discussed in more detail later is Landowners inability to obtain liability insurance to protect itself from the damages and losses that occur when hazardous pipelines have a rupture or break that leads to a spill or release causing damages. Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then I have no liability protection and am directly exposed to liability as Summit offers no indemnification or hold harmless protections to me for what damages or injury occur on my property outside of the specific Easement areas. This is true because, as discussed above, if the PUC approves this Application, then Summit has a blanket right to access my entire property and is not limited to the Easements. Also, Summit can allege either I or any person whom is on my property is negligent or partially negligent and I could be subjected to damages claims that would bankrupt me. Summit also shifts potential liability to me for any of my negligent acts that may occur in the Easement areas.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then I am exposed for significant personal liability for any damages due to the existence of and potential release or rupture or spill from the hazardous pipeline. I have reviewed my insurance documents and coverage for my property and obtained information from my insurance company. I have learned that my insurance policies have what is known as a “pollution exclusion” and that I would have no insurance coverage should any damage or injury be caused by a carbon dioxide release from the hazardous pipeline as carbon dioxide is considered a “pollutant” under my policy. I have considered this scenario: “If a hazardous pipeline transporting carbon dioxide is placed upon my land, and either I or someone I have invited onto my land is determined to be responsible for some damage to the pipeline or responsible for an event that caused some damage to the pipeline, and then CO2 escapes and injures a person, or livestock, or property either on my own property or on my neighbors – do any of my insurance policies I have provide me a lawyer for a defense AND provide me insurance coverage to pay for the damage/injuries?” In considering these questions I have determined not only does my policy not afford me a lawyer and not afford me a legal defense that I also have no coverage for such a scenario, nor can I purchase coverage or an insurance rider. I would be completely unprotected and

exposed to liability, and I would have to pay for my defense out of my own pocket and personally pay for and damages ultimately attributed to me. This is unacceptable. The PUC must deny this project for these reasons alone. The PUC cannot put landowners out in the cold to defend ourselves without any assistance. I should never have these kinds of risks due to the presence of a hazardous pipeline I do not want. If the PUC were to approve this Application, which it should not, it must require Summit to be solely responsible for any injuries or damages of any kind either directly or indirectly caused by any release of CO2 from their pipeline other than those caused by criminal acts of the landowners. The PUC must also require Summit to add each and every landowner and their tenants as additional insureds on all Summit liability insurance policies. The PUC should require that Summit add each landowner and inhabitant and tenant on each affected property to Summit' insurance policy all as additional insureds.

Q: Do you have any other concerns about this liability issues?

A: When evaluating the impact on property rights implicated by Summit's Indemnity provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of South Dakota for landowners to be treated that way. This poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015, lawsuit filed against Nemaha County, Nebraska landowner farmers who accidently/negligently struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of

gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4**. The ability of a large company like Summit, or whoever buys their pipeline once they cash out to be able to sue me or place blame on me because they choose to put something on my land against my will is in no way in the public interest and is a reason this Application must be denied.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then Summit forces landowner to deal directly with its tenant regarding any compensation landowner negotiates for any Easement or any damages landowner receives in terms of allocating any such payments between landowner and tenant. This guarantees that landowner will never be made whole by Summit for such damages as landowner and tenant have different interests and should each independently be compensated by Summit for such damages. Landowner should not be made to be the agent of Summit to deal separately with claims its tenant may be entitled to bring for compensation.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, it is essentially approving a roving right for Summit to locate its hazardous pipeline anywhere on my land. On Exhibit B of the Easement it talks about “proposed route” “proposed pipeline easement” and states the Exhibit B is “is not intended to depict the final alignment.” It is not a plat or a survey. So, I am in the dark – as is the PUC – of what it would be approving given there is no “final” route to approve. The PUC should deny the Application on this basis alone. It is not fair for Summit to have a roving right across my entire property or any length, size, and location of easements on my land it desires.

Q: What is your understanding of the significance of the Easement as proposed by Summit?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what Summit is and is not responsible for and how they can use my land forever. This is why the PUC cannot pretend the Easement is anything other front and center in these proceedings. No court no judge no jury can change the terms of the Easement, only the PUC now can consider what Summit wants to force upon all of the land at issue in these proceedings and consider those effects in terms of the factors the PUC is to consider when evaluating Summit's Application.

Q: You have discussed a number of concerns of how you would be negatively impacted by the terms and restrictions in the Easement alone should the PUC grant Summit's Application, do you think those negative effects go beyond just you as directly affected landowner?

A: Yes, while myself, my family, future generations, and my land would all be directly and negatively impacted it doesn't stop there. Just like Summit wants to claim there is a multiplier effect economically by the spending during construction and increased consumption by the workers or others in South Dakota, the flip side is that the negative impacts on me and my land are forever – the easement is forever and therefore any restrictions or limits or outright bans on my and any future landowners' ability to use their land as they see fit, and to improve or develop their land is a direct and ongoing negative economic impact locally on small business that are not getting contracted to do work or certain projects, I believe the value of my land decreases should this hazardous pipeline and associated Easement terms cast a cloud over my land forever, and I intend to protest my valuations and seek a reduction in property tax which will negatively affect that State – and Summit is not making this up. They will pay no real property taxes on any of the Easements obtained. My state also suffers do to the ripple effect of less development, expansion, and property improvement. This project has no net benefits – it is a net negative on the State.

Q. Do you have additional concerns how you would be negatively affected should the PUC approve this Application?

A: Yes, I didn't mention the compensation piece. Summit proposes to pay me one time only for the Easements. They do not propose recurring annual or quarterly payments. They make my land a liability when it was previously an asset. If this was forced upon us we should be paid a royalty of some percentage of the annual profits and value generated by Summit and its investors. They can't earn a dollar number one without my land and the land of others and we should be compensated much differently than they propose. It is not fair to the landowner, the county, or the State. It is not fair to the landowner because they want to have my land forever for use as they see fit so they can make a daily profit from their customers. If I was to lease ground from my neighbor I would typically pay twice a year every year as long as they granted me the rights to use their land. That only makes sense – that is fair. If I was going to rent a house in town I would typically pay monthly, every month until I gave up my right to use that house. By Summit getting out on the cheap and paying once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax revenue collection on the money I would be paid and then pay taxes on and contribute to this state and this country. It is money I would be putting back into my local community both spending and stimulating the local economy and generating more economic activity right here. Instead Summit's shareholders keep all that money and it never finds its way to South Dakota.

Q: Do you have any other concerns?

A: Yes, if the PUC approves this which they should not, how much loss of income will we have above the pipeline? We are concerned about the damage of the soil structure above the pipeline when they replace the soil over the pipeline. We are also concerned about the temperature of the pipeline and the effects of it on growing crops. Summit will only compensate the landowner for up to 3 years following the construction of the pipeline and the landowner is then forced to release and forever

discharge the Company of all such damages according to the easement. Any further yield losses will not be compensated by Summit.

Q: What is your next concern?

A: If the PUC approves this pipeline, which they should not, how will it affect the long-term value of the land? We believe that the pipeline will have a negative effect on the long-term value of the land. It will permanently reduce the farming ability and productivity of the land. That reduction will decrease our farm share of the land. The appraised value and potential resale will also be negatively impacted.

Q: What is your next concern?

A: We as landowners can never make any improvements to the land once the pipeline is in place according to the easement. For example: if we wanted to use drainage tile on the land which the pipeline is on, Summit would not allow it.

Q: What is your next concern?

A: The pipeline easement and access easements are permanent. Summit shall have the right to sell, assign, apportion, mortgage or lease this agreement and easements granted under it or in part to one or more parties. We will not know these parties and we as the landowners have no say in these matters. If the PUC approves this, which they should not, and results in an eminent domain action, how will these rules apply under eminent domain?

Q: What is your next concern?

A: The PUC has not granted the permit for Summit's pipeline project. Yet, Summit has moved forward with this project and gotten easements signed by some landowners. Summit has also served condemnation proceedings to other landowners. In the easement that we received, Summit states that this is a preliminary route and has the right to change the route. Before serving condemnation actions on landowners,

Summit should have an obligation to present the PUC and the public an established route. Without a route we will not know how much land or what effect the route change will have upon us as landowners. [Attachment B]

Q: What is your next concern?

A: What are the regulations regarding this pipeline and placement? We are concerned about the thickness of the pipeline and the pressure in the pipeline. We have heard at meetings that the thickness is only going to be ½ of an inch and Summit is running the pipeline at 2000 psi. This is a big safety concern to us. At a zoning and planning meeting in Aberdeen, SD, a Summit representative stated that they were only required to go to a depth of 4 ft. This is another big safety concern of ours. The changes in temperatures with freezing and thawing may affect the pipeline. We think that a depth of 4 feet and a pipe thickness of ½ an inch is not adequate for the conditions in South Dakota. It is not unusual for farm equipment to sink 4 feet into the soil in wet conditions. We would also like a study to determine the lifespan of such pipe thickness. Summit should be obligated to be transparent to the public and the PUC the exact guidelines for the pipeline. We are of the understanding that the Federal Government is coming out with new guidelines regarding CO2 pipelines. We would strongly encourage the PUC to wait on its approval of this pipeline until these Federal guidelines are in place. The California legislature has passed a law barring the construction of new underground carbon dioxide pipelines until those standards are finalized. For the safety of all citizens of South Dakota and not an out of state pipeline company, we are asking the PUC to hold off on granting the permit to Summit.

Q: What is your next concern?

Our concerns about safety are well founded because of the carbon dioxide pipeline break near Satartia, Mississippi on February 22, 2020. According to an article from the Des Moines Register, the pipeline in Mississippi was built through hilly, rugged terrain and was saturated with rain. The soil around the pipeline slid causing a pipe

weld to break. This released an explosion of ice and carbon dioxide according to the federal agency that investigated the accident. The cloud of carbon dioxide rolled toward the village of 50 people. Emergency personnel evacuated about 200 residents from there and the surrounding area, and 45 people needed medical attention. This scenario could easily happen again crossing the banks and hillsides of the James River that is near our land. [Attachments D - articles relating to the Safety of Pipelines for your review]

Q: What is your next concern?

We are concerned about the close proximity of the pipeline to farms and livestock operations in on the proposed route by Summit. This pipeline is too close to our cousins' farm and livestock operation. A pipeline break near them could potential kill them and their livestock. We are also concerned about the residents of this state. The pipeline should not be located near large and growing population centers such as Harrisburg, Tea, and Sioux Falls. [Attachment E Summit's map attached]. A pipeline break in that area could possible put thousands of citizens at risk as any drift could affect those cities. If a break happens, it will go viral. The economies of the State of South Dakota could be devastated by a pipeline break. How would this effect tourism, population growth, business growth and revenue to our State? NEGATIVELY!

Q: What is your next concern?

In the event of a break, who will be liable? Is it Summit? Is it the ethanol plants? Will it be the state of South Dakota? Summit should be liable and be bonded to cover all the costs associated with such break. This will assure us that any damages that we incur will be covered in the event that Summit, or any other pipeline owner they sell it to, declares bankruptcy or does not have the funds to adequately fund damages.

Q: What is your next concern?

Concerning liability, we have also been notified that our insurance carrier will not provide liability coverage on our land with a pipeline. They stated that there would be no coverage for any liability claims on that section or any section of land you own or rent, having anything to do with a claim concerning the pipeline.

Q: What is your next concern?

The viability of Summit's CO2 Pipeline is a concern. At the Redfield PUC Public meeting that Commissioner Chris Nelson was present, Summit stated that this CO2 pipeline would open up new markets to ethanol plants. The ethanol plants would receive premium prices for their ethanol if they captured and sequestered their CO2 and that premium would go to Summit. Has Summit provided any proof of that to the PUC? According to a New York Times article, California Governor Gavin Newsom signed an executive order to have all new passenger car and truck sales in the state to be all electric by 2035. New York state Governor Kathy Hochul signed into law a bill that set a similar goal. Washington state has also signed a pledge to phase out gasoline and diesel-powered vehicles. 6 major automakers including Ford, GM, Mercedes-Benz and Volvo along with 30 national governments pledged to work toward phasing out new gasoline and diesel-powered vehicles by 2040 worldwide, and by 2035 in leading markets. With all this move toward electric vehicles, how can Summit prove their claim that this pipeline will open up new markets to ethanol plants? How long will Summit be around with the current changes to the automobile industry? The PUC needs to take all these concerns into consideration before granting a permit to Summit.

Q: Do you think it is in the public interest of South Dakota to not be one-hundred percent clear on exactly who could become the owner of over hundreds of miles of South Dakota land?

A: No, Summit should have to reveal all of its owners at each level and all of those owners and so on until there is no mystery as to who is behind this newly formed deal company.

Q: Do you think it is in the public interest of South Dakota to not be one-hundred percent clear on exactly who will be operating and responsible for hundreds of miles of hazardous pipeline underneath and through South Dakota land?

A: No.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing South Dakota is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: Does it makes sense to you that PUC approval of the Application would lead to a perpetual Easement affecting you and your land?

A: I am unaware of any data proving there is a perpetual supply of carbon dioxide and the irony is we are supposed to produce less carbon dioxide and curb those activities more each year so one of the purposes of this project renders it by definition very limited in time and not something that a permanent easement should be available. Nowhere in Summit's application does it even attempt to argue let alone prove there is a perpetual necessity for this hazardous pipeline or to transport CO2 to unproven underground storage in North Dakota. My understanding of energy infrastructure like wind towers is they have a decommission plan and actually take the towers down when they become obsolete or no longer needed. Nothing manmade lasts forever. My land however will, and I want my family or future South Dakota families to have that land as undisturbed as possible and it is not in my interest or the public interest of South Dakota to be forced to give up perpetual and permanent rights in the land for this specific kind of pipeline project. It is also not prudent to authorize a forever interference on my property so Summit can chase twelve (12) years of tax credits at over \$1,500,000,000.00 per year.

Q: Do you have any other concerns about the Easement language that you can think of that is important for the PUC to know at this time?

A: Generally such unilateral restrictions and limitations on my rights are not conducive to the protection of property rights or my economic interest. I reserve the right to

discuss any additional concerns that I think of at the time of live testimony during the Hearing.

Q: Based upon what you have shared with the Commission above regarding Summit's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: As the owner of the land in question and as the person who knows it better than anyone else, do you believe that Summit offered you just, or fair, compensation for all of what they proposed to take from you so that their hazardous pipeline could be located across your property?

A: No, I do not. Not at any time has Summit, in my opinion, made a fair or just offer for all the potential impacts and effects and the rights that I'm giving up, and what we will be prevented from doing in the future and how their pipeline would impact my property forever and ever.

Q: Has Summit ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in your best interest?

A: No, they have not.

Q: Has Summit ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in the public interest of the State of South Dakota or for public use?

A: No, they have not.

Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the Takings Clause and the corollary in the South Dakota Constitution?

A: Yes, I am.

Q: What is your understanding as those relate to taking of an American citizens property?

A: My understanding is that, according to the United States Constitution and South Dakota's Constitution, that if the government is going to take land for public use, then in that case, or by taking for public use, it can only occur if the private landowner is compensated justly, or fairly.

Q: What is your understanding of the PUC's framework for decision making relative to this proposed hazardous pipeline?

A: **Attachment No. 2** includes four (4) main elements of proof that Summit has the sole burden to prove as summarized here: a) that Summit will comply with all applicable laws and rules; b) that no aspect of Summit's proposed hazardous pipeline will pose a threat of serious injury to: the environment, or to the social condition of current inhabitants or expected inhabitants in the siting area, or to the economic condition of current inhabitants or expected inhabitants in the siting area; c) that no aspect of Summit's proposed hazardous pipeline will substantially impair the health, safety, or welfare of the inhabitants; and d) that no aspect of Summit's proposed hazardous pipeline will unduly interfere with the orderly development of the region – with special consideration given to the views and positions of the governing bodies of affected local units of government.

Q: What is your testimony regarding whether or not Summit will comply with all applicable laws and rules?

A: That is impossible for the PUC to know and therefore it can't find in Summit's favor on that element. This type of analysis can only be based on what Summit claims it will do and given they have already admitted to failing to follow the law regarding their failure to timely and sufficiently notify all required persons affected by their Application and proposed route, the evidence available weighs against this element being able to be satisfied. Further, South Dakota counties have passed moratoria, ordinances, and regulations related to hazardous pipeline setbacks and other issues and Summit has not yet committed to following those applicable laws and rules and rather has stated they will not follow them or has sued to get out of following so rules and regulations. Until Summit dismisses all these lawsuits against the various

counties and affirmatively agrees to abide by any such setbacks and other ordinances, the PUC must deny their Application for failure to meet their burden of proof as to this element.

Q: Do you believe any aspect of Summit’s proposed hazardous pipeline will pose a threat of serious injury to the environment?

A: Yes, I do. There are many aspects of the proposed hazardous pipeline that pose threat of serious injury to the environment. I adopt and incorporate here all such concerns of all other witnesses. There are many such environmental concerns and I also adopt and share those as incorporated here and found in Attachment No. 5, It’s Time to End Carbon Capture of Climate Policy; Attachment No. 6. The facts, opinions, and arguments referenced here by no means include all such threats posed but highlight some of the many.

Q: Do you believe any aspect of Summit’s proposed hazardous pipeline will pose a threat of serious injury to the social condition of current inhabitants or expected inhabitants in the siting area, if yes, why?

A: Yes. The proposed Summit pipeline will pose a threat of serious injury to current future and social conditions, for the following reasons.

The proposed project’s finances and commercial foundation are dependent for ongoing commercial viability on the federal 26 U.S.C. § 45Q carbon capture tax credit program, which I will refer to as the 45Q Program. This dependency creates a risk to South Dakota’s social conditions. The purpose of the 45Q program is to reduce carbon emissions as a means to mitigate climate change. It was originally established by Congress in 2008 with a maximum tax credit benefit of \$20 per metric ton of carbon captured and sequestered. In 2018, Congress increased this value to \$50 per metric ton. In 2022, Congress further increased the value to up to \$85 per metric ton as part of the Inflation Reduction Act. The 45Q Program tax credits are available for the first twelve years of a capture facility’s operation, but the program has no limit on the total amount of tax credit claims by taxpayers or the tons of carbon dioxide sequestered. Thus, the 45Q program does not limit the

number of capture, transportation, and sequestration projects it may support. Further, these tax credits are essentially transferrable and the Inflation Reduction Act allows certain entities to claim them as a cash benefit paid by the U.S. Treasury, in certain circumstances converting this tax credit into a federal grant.

The Summit Project was proposed in 2021 when the 45Q tax credit for sequestered carbon stood at \$50 per metric ton. Then, in 2022, the tax credit was increased to \$85 per metric ton. At a tax credit rate of \$85 per metric ton, and given the Summit pipeline system's ultimate capacity of 15 million metric tons per year, the emitters of carbon dioxide that are contracted with Summit could receive up to \$1.275 billion in federal tax credits per year, or \$15.3 billion over twelve years. This federal tax benefit would provide essentially all of the revenue needed to pay for construction of the proposed project as well as Summit's ongoing transportation and sequestration services. That is, the proposed Summit Project is financially entirely dependent on the ongoing existence of the federal 45Q Program.

The Summit Project does not appear to have any other current government subsidies or market-based support sufficient to support its financial viability. Summit claims that its contracted ethanol plants may benefit from the low carbon fuel credits currently available in California, as well as possible similar programs that may be established in other states. However, the value of these low carbon credits is highly variable and dependent on supply of and demand for such credits. The more entities that lower their carbon score, the less valuable the credits become. The carbon dioxide emitters that are connected to the Summit system may be able to benefit from low carbon fuel credits to some degree, but by themselves such credits would likely not support the construction and ongoing operation of the proposed project. Low carbon fuel credits existed before Congress increased the value of the 45Q tax credits to levels that made the proposed project financially viable, indicating that the low carbon fuel credits by themselves were not sufficient to support development of regional carbon capture pipelines systems. Thus, low

carbon fuel standard programs, now and in the future, are unlikely to provide sufficient financial benefits to justify the construction and ongoing operation of Summit's proposed pipelines.

Another possible commercial foundation for the Summit system is use of captured carbon dioxide in enhanced oil recovery operations. For example, carbon dioxide has been captured at the Arkalon and Bonanza ethanol plants in Kansas, since 2009 and 2013, respectively and transported to enhanced oil recovery operations 15 miles to Oklahoma and 90 miles to Texas, respectively. However, these existing ethanol carbon capture and enhanced oil recovery projects have always been dependent on the 45Q Program and are much smaller scale projects. Moreover, enhanced oil using supercritical carbon dioxide has existed since the 1970s, but has not generated sufficient revenue by itself to support the cost of constructing carbon capture facilities and transporting anthropogenic carbon dioxide long distances to enhanced oil recovery operations. If enhanced oil recovery had been sufficiently profitable without federal subsidies to support anthropogenic carbon capture, then the carbon capture industry would have grown without the need for federal tax credits. Therefore, it is very unlikely that use of the captured carbon dioxide for enhanced oil recovery would by itself support the costs of constructing and operating the proposed project.

In addition, there is a commercial market for limited amounts of carbon dioxide for use in industrial and retail settings, but the total demand of such commercial markets is very small relative to the capacity of the Summit Project, and existing demand is met via existing carbon dioxide production facilities. Commercial demand for carbon dioxide is simply too small to support infrastructure on the scale of the proposed project.

Neither the low carbon fuel credits, enhanced oil recovery, nor other existing commercial uses of carbon dioxide are likely to provide sufficient revenue to support development of carbon capture systems on a scale of the Summit

Project. Thus, the Summit Project's current and future financial viability is entirely dependent on the continuation of the 45Q Program.

This dependency creates substantial long-term risks to the financial security of South Dakota's ethanol and corn industries. First, unlike other federal agricultural programs that subsidize South Dakota's otherwise market-based agricultural economy, the market for captured carbon dioxide is based for all practical purposes entirely based on the 45Q Program. The 45Q Program does not subsidize an existing market-based industry; it creates an entirely new industry, namely the carbon dioxide sequestration industry, which collects a pollutant and disposes of it. The 45Q Program converts a liability (carbon dioxide) into an asset. Absent the 45Q program, the carbon dioxide sequestration industry would not exist to the extent necessary to support construction and operation of Summit Project. While it is true that construction of the Summit Project would create a new revenue stream in the form of tax credits for ethanol plant investors, it is also true that this revenue stream would be entirely dependent on the continued existence of the 45Q Program, that in turn would depend on the financial health of the federal government and ongoing political support for the 45Q Program. As federal budget deficits increase, political pressure to limit federal expenditures will likely also increase, putting at risk funding programs deemed unnecessary or politically vulnerable, such as the 45Q Program.

Summit's application states that, "[t]he Heartland Greenway System will facilitate significant CO₂ emissions reductions that will allow industry and governments in the project footprint to meet their carbon reduction goals." Summit, however, does not identify any provision in South Dakota state law or local ordinances that mention or even recognize the existence of climate change, much less impose carbon reduction goals. Thus, the policy purpose for the Summit Project, which is climate change mitigation, is not in accordance with South Dakota law and does not advance state policy objectives. South Dakota's governments do not agree that climate change exists and have not adopted policies to mitigate it. Yet, Summit seeks South

Dakota government approval for its project, the sole purpose of which is to mitigate climate change. Approval of the Summit Project advances a policy objective with which the State of South Dakota does not agree.

Moreover, there are no federal mandates that South Dakota must approve the Summit Project or any other carbon capture climate change mitigation project. Federal law does not require South Dakota to support carbon capture and storage. It is possible that future federal air quality regulations may make carbon capture one option for addressing carbon dioxide emissions, but the promulgation of such possible rule is at best years in the future, subject to litigation, subject to rejection by future federal administrations aligned with South Dakota's position on climate change policy, and therefore entirely speculative. The Commission cannot approve the proposed project based on a claim that federal mandates require approval of the proposed project, because such mandates do not currently exist and may never exist. While the federal government currently has climate change policy objectives, it has not required development of carbon capture projects, but rather created tax credits that encourage but do not mandate such development. Participation in the 45Q Program is voluntary. Therefore, the federal government has left decisions on the merits of carbon capture projects to the judgment of state governments, which are free to support or reject any particular project or the carbon capture industry as a whole.

Given the State of South Dakota's rejection of the need for climate change mitigation and its freedom to accept or reject carbon capture development, a Commission approval of Summit's proposed project would likely be seen by many South Dakotans as an extreme example of hypocritical government action. As such, Commission approval of the Summit Project would result in substantial reputational damage to and a loss of citizen trust and faith in the Commission and South Dakota's state government in general. Since faith in government institutions is part of the bedrock of American society, such damage would constitute "a threat of serious

injury . . . to the social . . . condition of inhabitants or expected inhabitants in the siting area,” as well as within all of South Dakota.

The Summit Project also creates a threat of serious injury to the social conditions in South Dakota due to excessive state and local dependency on a politically unstable federal funding program. The threat of anthropogenic climate change is the subject of considerable political controversy within the United States and South Dakota. The future commercial viability of the 45Q Program and the Summit Project is entirely dependent on ongoing federal political support for climate change mitigation in general and the 45Q Program in particular. A change in federal leadership that agrees with the State of South Dakota’s position on climate change could result in future congressional and administrative actions to reduce or even eliminate the 45Q Program. Further, the ongoing viability of the 45Q Program is dependent on the financial health of the federal government, including the fiscal impacts of the ever-growing federal budget deficit. Given that the 45Q Program includes no cap on federal financial outlays, it will increase the federal deficit potentially by tens or even hundreds of billions of dollars annually, depending on how fast it grows. In the event of a severe economic downturn or a federal government default on its loans, Congress could reduce or entirely eliminate the 45Q Program, prior statutory commitments notwithstanding. Thus, the commercial foundation for the Summit Project is built on a political foundation that is too unstable to justify making South Dakota’s corn and ethanol industries dependent on it.

In the event that the 45Q Program falls out of favor, the commercial foundation for the Summit Project could disappear quickly, causing it to precipitously cease operation, in which case South Dakota’s corn and ethanol industries would face a potentially existential financial shock that could significantly disrupt South Dakota’s agricultural industries, many rural communities, and the state’s overall economic wellbeing. Further, landowners would be saddled with paying for the cost of abandoned pipeline mitigation. It is one thing for South Dakota to accept federal

subsidies for production of agricultural commodities for which there will always be demand. It is an entirely different thing to base a substantial part of South Dakota's farm economy on an entirely new federally created non-market-based industry that captures a waste product for which there will never be significant commercial demand. There is a risk to tying South Dakota's market-based agricultural economy to politically and fiscally unstable federal largess. Construction of the Summit Project would make its contracted ethanol producers and the farmers that provide them with corn overly dependent on a politically unstable federally created artificial market for carbon dioxide. The demise of this market, for either political or fiscal reasons, would severely damage the State's agricultural economy and disrupt rural communities throughout South Dakota. Such community disruption would constitute "a threat of serious injury . . . to the social . . . condition of inhabitants or expected inhabitants in the siting area," as well as within all of South Dakota.

While the promised financial benefits of the Summit Project appear to be tempting, their acceptance would come at a cost and create a threat of serious injury to the political and social fabric of the State of South Dakota.

Further, I adopt and incorporate the opinions found in **Attachment No. 7** and those found in **Attachment No. 8**.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will pose a threat of serious injury to the economic condition of current inhabitants or expected inhabitants in the siting area, if yes why?

A: In addition to those already discussed, based upon my experience and all the information obtained throughout this process and simple common sense the answer is yes – this hazardous pipeline does pose a threat of serious injury in this way. There are many such economic concerns. If the PUC approves this Application I will likely not invest in and develop my property as I would have without the effects of such a hazardous pipeline. The fact I can't purchase insurance to cover me and my property against certain claims and allegations and the fact whether or not I am alleged to be liable for or to have contributed to a leak or rupture event rests in the

hands of Summit's insurance defense attorneys should they seek to spread their risk of liability on to me, it is likely I and others will not use the easement area and surrounding areas to their highest and best use given the less activity in that area means the less likely we could be blamed for something relative to the pipeline or supporting equipment.

I share the concerns of Marvin Lugert and Loren Staroba about future fertility of the land and compaction and yield loss and loss in productivity not just in years one through three post-construction, but forever. As discussed by Mr. Lugert and Mr. Staroba, they have experienced continual yield loss for 20 to 45 years post-pipeline construction. All the claims and glossy brochures about how great the unknown contractors and workers who have the responsibility of screening the topsoil and other important aspects is just talk. I adopt and share those as incorporated here and found in **Attachment No. 9**, related to soil compaction and reduced yields – and that was a study funded by a major pipeline player. I also incorporate the conclusions and findings in **Attachment No. 10**.

The facts, opinions, and arguments referenced herein by no means include all such economic threats posed but highlight some of the many. The overall chill on development, expansion and freedom to do as you choose on and with your land are all significant economic detriments that occur only if the PUC approves this Application.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will substantially impair the health, the safety, or the welfare of the inhabitants, if yes why?

A: In addition to what we have already discussed, yes, this proposed hazardous pipeline would substantially impair the health and the safety and welfare of the inhabitants. There are many such substantial impairment concerns and I adopt and share those as incorporated here and found in **Attachment No. 11**. The facts, opinions, and arguments referenced here by no means include all such threats posed but highlight

some of the many. I further adopt the testimony of Dr. Schettler and Carolyn Raffensperger.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will unduly interfere with the orderly development of the region, if yes, why?

A: Yes, I incorporate my answers above here. Adding a hazardous and dangerous pipeline to the region and taking people's rights away while telling them what they can and can't do is a direct undue interference with the orderly development of each affected parcel, the surrounding parcels, and thereby the region. The existence of this particular hazardous CO2 pipeline carries a stigma and perception that it is bad and dangerous. Such stigmas mean it is more likely that people will not want to purchase land with such a hazardous CO2 pipeline or would seek a discount to do so. I am aware of property that had interest for purchase but did not get bids once it was discovered a CO2 company sought to locate a hazardous pipeline on the land.

Q: What is your understanding regarding the views and positions of the governing bodies of affected local units of government in and around the proposed siting and corridor area?

A: I am aware of many local boards who continue to exercise their rightful local power to enact intelligent land use restrictions in ordinances and through setback requirements. Many counties are not in favor of this project. Others have enacted Moratoria pending further advances in federal law and guidance on the subject and pending further study. It would be irresponsible for the PUC to approve this Application until all counties have weighed in and complete their local ordinances related to CO2 pipelines.

Q: What is it that you are requesting the PUC Commissioners do in regard to Summit's Application for its proposed hazardous pipeline across South Dakota?

A: I am respectfully and humbly requesting that the Commissioners think far beyond a temporary job spike that this project may bring to a few counties and beyond the relatively small amount of taxes this proposed foreign pipeline would possibly

generate. Instead think about the perpetual and forever impacts of this pipeline as it would have on the landowners specifically, first and foremost, but also thereby upon the entire state of South Dakota. This project is not in the best interest of the state of South Dakota. When you look at all the negative effects that will be in place forever versus limited benefits, if any, this proposed hazardous pipeline should not be approved. There are no net benefits of this project. It is not right to subject hundreds of miles and land and countless numbers of people and business to this hazardous pipeline all for the sole benefit of Summit's owners and possibly four or so Ethanol companies in South Dakota. This is not for the greater good, it is not for public use, Summit is not a common carrier, and this Application is a bad idea that must be denied. I also am against corporate welfare and the billions of dollars in our taxpayer dollars that will be allocated to this project if it is built.

Q: Does Attachment No. 12 here contain additional information to support your concerns that if the PUC approves this Application, you will be unable to obtain liability insurance to that would assist in providing you a defense against claims of liability should CO₂ from the proposed pipeline to be located on your land cause injury or damage to any person or thing that you wish to be part of your testimony that you can discuss in more detail as needed at the Hearing?

A: Yes.

Q: Does Attachment No. 13 here contain other documents that further illustrate your concerns about Summit's Application and that you wish to be part of your testimony that you can discuss in more detail as needed at the Hearing?

A: Yes.

Q: Do you believe the PUC should approve Summit's Application to locate its proposed hazardous CO₂ pipeline, on, under, across, over, and through the land in question?

A: No. they should not for all of the reasons expressed herein. However, if the PUC was to approve the Application, then it should force Summit to move the route along property boundaries and away from structures and any sensitive land features.

Summit hasn't constructed an inch of this pipeline and they can and should re-route if approved.

Q: Although you have made it clear that you believe there is no appropriate location on or near your property for a hazardous high pressure CO2 Pipeline, if the PUC asked you to provide a potential alternative location or route on your property, please describe where that would be, if any such potential location exists.

A: There is no place on my land which is appropriate for a hazardous CO2 pipeline for all the reasons discussed here. There is no place on our land which is appropriate for a hazardous CO2 pipeline for all the reasons discussed above and the proximity of the pipeline is dangerously close to our cousins' home and feedlot. However, if the PUC were to determine that this dangerous hazardous CO2 pipeline had to be on our property it should be placed on the far westside near the quarter line. The absolute best alternative would be that the pipeline crosses the James river south of SD Highway 20 and then goes up north at 390th Avenue. There are no farms within a half mile of this route.

Q: Are all of your statements in your testimony provided above true and accurate as of the date you signed this document to the best of your knowledge?

A: Yes, they are.

Q: Have you fully expressed each and every opinion, concern, or fact you would like the PUC Commissioners to consider in their review of Summit's Application?

A: No, I have not. I have shared that which I can think of as of the date I signed this document below, but other things may come to me, or my memory may be refreshed and I will add and address those things at the time of the Hearing and address any additional items at that time as is necessary. Additionally, I have not had an adequate amount of time to receive and review all of Summit's answers to our discovery and the discovery of others, so it was impossible to competently and completely react to that in my testimony here and I reserve the right to also address anything related to

discovery that has not yet concluded as of the date I signed this document below. Lastly, certain documents requested have not yet been produced by Summit and therefore I may have additional thoughts on those I will also share at the hearing as needed.

Q: Thank you, I have no further questions at this time and reserve the right to ask you additional questions at time of the Hearing in this matter.

Dated June 14, 2023

/s/ Marty Francoli

Marty Francoli, Individually and for
The Francoli Family Limited Partnership

/s/ Scott Francoli

Scott Francoli, Individually and for
The Francoli Family Limited Partnership

/s/ Janell Eggers

Janell Eggers, Individually and for
The Francoli Family Limited Partnership