

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Summit
Carbon Solutions, LLC, for a Routing
Permit for the Otter Tail to Wilkin Carbon
Dioxide Pipeline Project in Otter Tail and
Wilkin Counties, Minnesota

TABLE OF CONTENTS

STATEMENT OF THE ISSUES 2

SUMMARY OF RECOMMENDATIONS 2

FINDINGS OF FACT 2

I. Background..... 2

 A. Applicant..... 2

 B. Description of Proposed Project 2

 C. The Purpose and Need for the Proposed Project 5

 D. Regulatory Permits and Approvals 6

 E. Procedural History 6

 F. Public, Tribal, and Agency Participation..... 24

 Public Input..... 25

 Tribal Input..... 26

 Agency Input..... 27

 Local Government Input..... 28

II. Routes Evaluated 28

 A. Applicant’s Preferred Route (Route Alternative – South or RA-South). ... 29

 B. Route Alternative – North (or RA-North). 29

 C. Route Alternative – Hybrid (or RA-Hybrid). 30

III. Environmental Review 30

 A. Scoping Requirements and Scoping Decision 34

 B. Draft Environmental Impact Statement Requirements..... 37

 C. Draft Environmental Impact Statement Preparation and Issuance 38

 D. Final Environmental Impact Statement Requirements..... 39

 E. Final Environmental Impact Statement Preparation and Issuance 40

 F. Environmental Impact Statement Adequacy Determination Requirements
 41

 G. Parties’ Adequacy Arguments..... 41

 H. EIS Adequacy Analysis..... 43

a.	Alternative Technologies.....	44
b.	Alternative Routes.....	44
c.	Modified Designs, Layouts, Scales, and Magnitudes.....	44
d.	Possible Mitigations.....	45
e.	Response to Comments.....	45
f.	Contested Adequacy Issues.....	48
	<i>Cultural Surveys</i>	48
	<i>Property Values</i>	49
	<i>Emissions Accounting</i>	50
	<i>Geohazards and Horizontal Directional Drilling</i>	52
	<i>Location-Specific Risk of Leak or Rupture</i>	52
	<i>Leak or Rupture Analysis</i>	53
	<i>Water Consumption</i>	54
	<i>Groundwater Investigations and Potential Impacts</i>	55
	<i>Buffering of CO₂ Release</i>	56
	<i>“Similar” Wetland Impacts and Soil</i>	57
g.	Compliance with Rules.....	58
IV.	Routing Permit Denial	58
A.	CEO-Cited Authority.....	59
B.	CURE-Cited Authority.....	60
V.	Minnesota Environmental Policy Act Analysis	61
A.	Significant Impact.....	61
B.	PHMSA Regulation Adequacy.....	63
C.	Alternatives to Permit Issuance.....	64
VI.	Factors for a Routing Permit	66
VII.	Application of Routing Factors to Proposed Routes	67
A.	Human Settlement	68
1.	Aesthetics.....	68
2.	Cultural Resources/Values.....	69
3.	Environmental Justice.....	69
4.	Land Use and Zoning.....	70
5.	Noise.....	71
6.	Populated Areas.....	73
7.	Property Values.....	73
8.	Public Health and Safety.....	73
9.	Public Services and Infrastructure.....	78
10.	Recreation.....	78
11.	Socioeconomics.....	79
12.	Tribal Treaty Rights.....	80
13.	Effects on Human Settlement: Comparison of Route Alternatives	81
B.	Natural Environment and Natural Features	81
1.	Air Quality, Greenhouse Gas Emissions, and Climate Change ...	81
2.	Geology and Topography.....	82
3.	Public and Designated Lands.....	83
4.	Rare and Unique Resources.....	84
5.	Soils.....	87

6.	Vegetation	88
7.	Water Resources	89
8.	Wetlands	93
9.	Wildlife and Habitats	94
10.	Effects on Natural Environment and Natural Features: Comparison of Route Alternatives	95
C.	Lands of Historical, Archaeological, and Cultural Significance	95
D.	Impacted Economies	99
E.	Pipeline Cost and Accessibility	100
F.	Use of Existing ROW	101
G.	Mitigation by Regulatory Control	101
H.	Cumulative Potential Effects	102
I.	Rules, Policies, Regulations	102
VIII.	Analysis	102
IX.	Routing Permit Conditions and Proposed Mitigation Measures	105
A.	Uncontested Conditions and Mitigation Measures	105
B.	Disputed or Unresolved Conditions and Mitigation Measures	108
	CONCLUSIONS OF LAW	111
I.	EIS Adequacy	111
II.	Routing Permit	113
	RECOMMENDATIONS	113
	NOTICE	114

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Summit Carbon Solutions, LLC, for a Routing Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION**

The Minnesota Public Utilities Commission (PUC or Commission) referred this matter to the Office of Administrative Hearings for public-hearing proceedings pursuant to Minnesota Rules chapter 1405 in February 2023. The Commission further directed the Minnesota Department of Commerce to prepare an environmental impact statement pursuant to chapter 4410 for the proposed project.

Administrative Law Judge Christa L. Moseng was assigned to the matter. The Commission directed the ALJ to consider whether the Applicant should be granted a route permit for a 28-mile, 4-inch carbon dioxide pipeline from the Green Plains ethanol plant near Fergus Falls to the North Dakota border south of Breckenridge.

Public hearings were held on August 20 and 21, 2024. An evidentiary hearing was held on August 22, 2024. The hearing record closed on September 11, 2024, the deadline established by the Judge for written comments. Initial briefs were filed on September 18, 2024. Reply briefs were filed on October 4, 2024.

Christina K. Brusven and Patrick D.J. Mahlberg, appeared on behalf of Summit Carbon Solutions, LLC (Summit or Applicant).

Sarah Mooradian and Hudson Kingston appeared on behalf of Clean Up the River Environment (CURE).

Amelia Vohs appeared on behalf of Minnesota Center for Environmental Advocacy and the Sierra Club (Clean Energy Organizations or CEO).

Charles Sutton appeared on behalf of the International Union of Operating Engineers Local 49 (IUOE).

Richard Dornfeld, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (DOC or the Department).

Craig Janezich and Bret Eknes, appeared on behalf of the staff of the Commission.

STATEMENT OF THE ISSUES

1. Whether the final environmental impact statement (EIS, FEIS, or final EIS) prepared by the Department is adequate;
2. Whether Summit should be granted a routing permit for its proposed CO₂ pipeline project;
3. If Summit should be granted a routing permit, which route alternative should be selected by the Commission; and
4. If Summit should be granted a routing permit, what permit conditions are appropriate or necessary.

SUMMARY OF RECOMMENDATIONS

The Commission should find that (1) the final EIS prepared in connection with this matter is adequate under Minn. R. 4410.2800, subp. 4 (2023); (2) Summit should be granted a routing permit for its proposed CO₂ pipeline project; (3) if the Commission grants a routing permit, the Commission should select the RA-South Route Alternative; and (4) If the Commission grants Summit a routing permit, the Commission should impose conditions consistent with this report.

Based upon the evidence in the hearing record, the Judge makes the following:

FINDINGS OF FACT

I. Background

A. Applicant

1. Summit, a Delaware limited liability company, authorized to do business in the State of Minnesota, has requested a Routing Permit for the project described below (Project).¹

2. Summit will construct, own, operate, and manage the Project.²

B. Description of Proposed Project

3. The proposed Project consists of approximately 28.1 miles of 4-inch nominal diameter (4.5-inch outside diameter), carbon steel pipeline and associated facilities in Otter Tail and Wilkin counties. The Project will capture CO₂ from the ethanol

¹ Ex. Summit-1 at 2 (Application).

² Ex. Summit-11 at 1 (Powell Direct).

plant located near Fergus Falls in Otter Tail County, Minnesota, and transport the CO₂ west to the Minnesota-North Dakota border near Breckenridge in Wilkin County, Minnesota.³

4. In addition to the pipeline, the Project's associated facilities include: a CO₂ capture facility at the ethanol plant; a pipeline pig/inspection tool launcher located at the ethanol plant; five mainline valves (MLVs) and an impressed current cathodic protection system within the pipeline permanent right-of-way; and temporary and permanent access roads.⁴

5. Summit has requested a route width of 500 feet for most (approximately 98%) of the Project. Summit is requesting a wider route width of up to 1,550 feet between mileposts (MP) 6.4 and 7.1 in Otter Tail County for additional route study and the potential need to make minor modifications to the pipeline alignment in this area.⁵

6. Summit generally proposes a construction workspace width of 100 feet in uplands and 75 feet at crossings of wetlands and waterbodies. This is where construction activities would occur. The construction workspace would be within the route width. Some locations, such as at waterbody and road crossings, would require additional temporary workspace (ATWS) for specialized construction methods. The construction workspace would be reduced to 50 feet wide at horizontal directional drill (HDD) or bore crossings of waterbodies, roads, and railroads. Pipeline construction will occur within the defined and surveyed temporary construction workspace.⁶ Summit has reduced the width of temporary workspace required for the crossing of wetlands from 50 feet to 25 feet to minimize the temporary impacts to the wetland. ATWS will be sited outside of wetlands to the extent practicable.⁷

7. Summit would retain a 25- to 50-foot-wide permanent right-of-way centered over the pipeline for inspection and maintenance access during operation.⁸

8. The pipeline would be buried to a depth of cover in compliance with the applicable minimum depth of cover requirements described in Pipeline and Hazardous Materials Safety Administration (PHMSA) requirements, agricultural area standards in Minn. Stat. § 216G.07, and/or landowner agreements. The Applicant plans to install the pipeline to allow for a minimum depth of cover of 54 inches, measured from the ground surface to the top of the pipe. The minimum depth of cover would be increased to 60 inches at waterbody and drainage ditch crossings as well as at private road crossings as measured at the bottom of the road ditch.⁹

³ Ex. DOC-18 at 1-1 (FEIS).

⁴ Ex. DOC-18 at 1-1 (FEIS).

⁵ Ex. Summit-1 at 2 (Application); Ex. DOC-18 at 2-4 (FEIS).

⁶ Ex. Summit-1 at 2, 14–15 (Application); Ex. Summit-12 at 3 (O'Konek Direct); Ex. DOC-18 at 2-4 (FEIS).

⁷ Ex. Summit-13 at 14 (Zoller Direct).

⁸ Ex. Summit-1 at 2, 14–15 (Application); Ex. Summit-12 at 3 (O'Konek Direct); Ex. DOC-18 at 2-4 (FEIS).

⁹ Ex. Summit-1 at 8 (Application); Ex. DOC-18 at 2-1, 2-10 (FEIS).

9. The pipeline will be made of high-strength carbon steel welded pipe with a wall thickness of 0.189 inches and will be coated with an external fusion bonded epoxy coating to protect against corrosion. The standard operating pressure of the Project will be 1,200 pounds per square inch gauge (psig) to 2,150 psig. Table 2 from the Application identifies the Project's pipe specifications. When complete, the pipeline will be able to support a maximum design flow rate of approximately 13.1 million standard cubic feet of CO₂ per day or 0.25 million metric tons of CO₂ per year.¹⁰

10. The Project will have a normal planned capacity to capture and transport 524 metric tons per day of CO₂ (approximately 0.19 million metric tons per annum (MMTPA) assuming a 355-day operational year). The maximum throughput of the capture facility is 0.19 MMTPA, which is based on the ethanol plant's current theoretical CO₂ emissions and capture potential. The maximum hydraulic throughput of the pipeline is 0.25 MMTPA, based on the pipeline maximum operating pressure and hydraulics.¹¹

11. Summit has a CO₂ offtake agreement with the ethanol plant. The ethanol plant produces CO₂ as part of its fermentation process; this is the CO₂ that would be captured by the Project. The CO₂ capture facility constructed at the ethanol plant would collect the CO₂ gas produced during the ethanol fermentation process and then would compress, dehydrate, and cool the CO₂ to a dense phase so that it could be transported through the pipeline. The capture facility would be connected to the vent from the existing CO₂ fermentation scrubber. The Project is capable of capturing 100 % of the CO₂ emitted by the ethanol plant's CO₂ scrubber stack while the capture facility is online.¹²

12. The Project will interconnect to a larger proposed CO₂ pipeline network, referred to as the Midwest Carbon Express (MCE) Project, to transport the CO₂ to a sequestration area in North Dakota, where the CO₂ will be safely and permanently stored over a mile underground in saline formations utilizing separately permitted Class VI injection wells.¹³ Once operational, the MCE Project will include approximately 2,000 miles of pipelines for transportation of CO₂ from 32 ethanol plants located across Minnesota, Iowa, Nebraska, North Dakota, and South Dakota.¹⁴

13. Summit plans to commence construction of the Project in the third quarter of 2025 and complete construction in the fourth quarter of 2026. Summit plans to place the Project into service in late 2026. However, construction timing is contingent on receipt of required permits and authorizations.¹⁵

¹⁰ Ex. Summit-1 at 8 (Application); Ex. DOC-18 at 2-1 (FEIS).

¹¹ Ex. Summit-1 at 13 (Application); Ex. DOC-18 at 2-1 (FEIS).

¹² Ex. DOC-18 at 1-1, 2-4 – 2-5 (FEIS); see *also* Ex. Summit-23 at 3 (Piggott Rebuttal).

¹³ Ex. Summit-1 at 1 (Application); Ex. DOC-18 at 1-2, – 2-2 (FEIS).

¹⁴ Ex. Summit-1 at 1 (Application).

¹⁵ Ex. Summit-11 at 3 (Powell Direct); Ex. DOC-18 at 2-17 (FEIS).

C. The Purpose and Need for the Proposed Project

14. Summit proposed the Project to capture and transport CO₂ from the ethanol plant to the North Dakota and Minnesota border, at which point the Project will interconnect to the larger proposed CO₂ pipeline network referred to as the MCE Project which will transport the CO₂ to a sequestration area in North Dakota, where the CO₂ will be safely and permanently stored over a mile underground in saline formations utilizing separately permitted Class VI injection wells.¹⁶

15. Summit intends the project to benefit Minnesota's ethanol and agriculture industries by enhancing their environmental and long-term economic sustainability. The Applicant has a CO₂ offtake agreement with the ethanol plant.¹⁷

16. Because the Project will capture the ethanol plant's CO₂ for permanent sequestration, the carbon intensity (CI) score, or carbon footprint, of the ethanol plant's ethanol will be reduced by an estimated 40%. Capturing the ethanol plant's CO₂ reduces the environmental impact of the ethanol plant's ethanol product and improves the plant's ability to compete in low carbon fuel standard (LCFS) markets, which have increasingly stringent carbon reduction goals and market competition. LCFS markets represent a significant growth opportunity for lower carbon fuels, such as decarbonized ethanol, into the future.¹⁸

17. Without the Project, the ethanol plant lacks a viable option to capture, transport, and permanently store its CO₂ emissions. There are no proven subsurface geologic formations near the ethanol plant that can store the volume of CO₂ the ethanol plant produces. The Project provides a CO₂ transportation solution, which otherwise would not exist, and without which the ethanol plant would be at a significant long-term disadvantage to ethanol plants in states like North Dakota and Illinois, which have proven, suitable subsurface geologic storage formations within those states' boundaries.¹⁹

18. The Applicant intends to capture and permanently sequester 100% of the CO₂ captured from the ethanol plant. Summit provided testimony that the ethanol plant has no plans to use the CO₂ for enhanced oil recovery, and to do so would lessen the Project's impact on reducing the CI score of the ethanol produced at the ethanol plant.²⁰ The ethanol plant also provided a statement that the ethanol plant's plans are for the CO₂ to be permanently sequestered.²¹

19. The CO₂ capture facility would capture CO₂ otherwise released at the ethanol plant and reduce CO₂ emissions in Minnesota, which would be consistent with

¹⁶ Ex. Summit-1 at 1 (Application).

¹⁷ Ex. Summit-1 at 4 (Application).

¹⁸ Ex. Summit-1 at 4 (Application); Ex. PUC-13 at 22 (Scoping EAW); Ex. DOC-18 at 1-1 and 2-2 (FEIS); Ex. Summit-11 at 4 (Powell Direct).

¹⁹ Ex. Summit-1 at 4 (Application).

²⁰ Ex. Summit-18 at 1 (Powell Rebuttal).

²¹ August 20, 2024 Fergus Falls Public Hearing Transcript (Aug. 20, 2024 Pub. Hrg. Tr.) at 60 (Petersen).

Minn. Stat. §§ 216H.01 and 216H.02 (2024), which require Minnesota to reduce its greenhouse gas emissions (GHGs) to achieve net zero by 2050.²² Additionally, CO₂ is a leading contributor to climate change, which has been identified by the World Health Organization as a health threat. The Project, which is designed to capture and transport 524 MMTPA of CO₂ per day (or 0.19 MMTPA), would reduce GHGs in the atmosphere and contribute to reducing the effects of climate change.²³

D. Regulatory Permits and Approvals

20. A Certificate of Need is not required for the Project because it is not classified as a large energy facility under Minn. Stat. § 216B.2421, subd. 2 (2024) (i.e., the Project will not transport natural or synthetic gas, and it does not have more than 50 miles of its length in Minnesota).

21. Pursuant to Minn. Stat. § 216G.02, subd. 2 (2024), “[a] person may not construct a pipeline without a pipeline routing permit issued by the [Commission.]”²⁴ For the purposes of this Project, a pipeline is defined to include a “pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.”²⁵ Minn. Stat. § 216G.02 (2024) defines “gas” as “natural gas, flammable gas, carbon dioxide, gas that is toxic, or gas that is corrosive, regardless of whether the material has been compressed or cooled to a liquid or supercritical state.”

22. Pursuant to Minn. Stat. § 216G.02, subd. 4, a Route Permit issued by the Commission “is the only site approval required to be obtained by the person owning or constructing the pipeline. The pipeline routing permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments.”

23. Permits identified by Summit as potentially being required for construction and operation of the Project are identified in Section 6.19 of the Application and Section 3.7 of the FEIS.²⁶

24. Under Section 8 of the Sample Pipeline Routing Permit, the permittee will be obligated to comply with all applicable rules and statutes.²⁷

E. Procedural History

25. On September 12–13, 2022, Summit filed an Application for a Route Permit to construct the Project.²⁸ Summit proposed the Applicant’s Preferred Route (also referred to as RA-South) after a careful review of sensitive routing resources,

²² Ex. DOC-18 at 5-99 (FEIS).

²³ Ex. DOC-18 at 5-45 (FEIS).

²⁴ Minn. Stat. § 216G.02, subd. 2.

²⁵ Minn. Stat. § 216G.02, subd. 1(d)(2).

²⁶ Ex. Summit-1 at 135 (Application) and Ex. DOC-18 at 3-7 – 3-13 (FEIS).

²⁷ Ex. PUC-8 at 12 (Sample Pipeline Routing Permit).

²⁸ Exs. Summit-1 (Application and public Appendices 1a–12) and Summit-2 (nonpublic Appendix 8).

coordination with agencies regarding routing concerns, as well as coordination with affected landowners to cross their private properties to best reflect their preferences.²⁹

26. On September 26, 2022, the Commission filed the Notice of Comment Period on Application Completeness providing for initial comments on application completeness, process, and environmental review to be filed by October 10, 2022, reply comments by October 24, 2022, and supplemental comments by October 31, 2022.³⁰

27. On October 3, 2022, the Commission filed an Amended Notice of Comment Period, seeking comments on application completeness, process, and environmental review and varying the time period for acceptance of the Application. The Notice provided for initial comments on application completeness to be filed by October 10, 2022, reply comments by October 24, 2022, and supplemental comments by October 31, 2022.³¹

28. On October 5, 2022, MCEA filed a letter requesting a 45-day extension for initial comments.³²

29. On October 6, 2022, IUOE filed a letter supporting the request by MCEA for a 45-day extension of the initial comment period.³³

30. On October 7, 2022, Clean Up the River Environment (CURE)³⁴ and LIUNA Minnesota & North Dakota (LIUNA)³⁵ submitted comments in support of MCEA's request for a 45-day extension of the initial comment period. Summit submitted comments opposing, in part, the requests filed by MCEA and IUOE seeking a 45-day extension of the initial comment period. Summit noted that it would not oppose the Commission granting a modest extension of ten days (keeping all other intervals in place) in response to the MCEA and IUOE requests.³⁶

31. Also on October 7, 2022, Summit filed a revised cover letter and application.³⁷ Summit also filed comments correcting the maximum route width of the requested route.³⁸

32. Also on October 7, 2022, the Commission filed a Notice of Extended Comment Period setting new deadlines for initial comments to be filed by October 31,

²⁹ Ex. Summit-1 at 28 (Application).

³⁰ Ex. PUC-1 (Notice of Comment Period on Application Completeness).

³¹ Ex. PUC-2 (Amended Notice of Comment Period on Application Completeness).

³² MCEA Extension Request (Oct. 5, 2022) (eDocket No. [202210-189586-01](#)).

³³ Local 49 Extension Request (Oct. 6, 2022) (eDocket No. [202210-189587-01](#)).

³⁴ CURE Comments (Oct. 7, 2022) (eDocket No. [202210-189626-01](#)).

³⁵ LIUNA Comments (Oct. 7, 2022) (eDocket No. [202210-189621-01](#)).

³⁶ Summit Objection to Extension Request (Oct. 7, 2022) (eDocket No. [202210-189620-01](#)).

³⁷ Ex. Summit-3 (Letter Describing Corrections, Revised Filing Letter and Application, and COS).

³⁸ Ex. Summit-3 (Letter Describing Corrections, Revised Filing Letter and Application, and COS).

2022, reply comments by November 14, 2022, and supplemental comments by November 21, 2022.³⁹

33. During the initial public comment period ending October 31, 2022, public comments from various individuals and entities were filed regarding the Project.⁴⁰

34. On October 31, 2022, EERA filed comments and recommended that the Commission dismiss the outstanding petition for preparation of an environmental assessment worksheet (EAW) because the Project falls within a mandatory environmental review category that modifies the procedural process for this application; delay action on a citizen advisory committee; and approve EERA's proposed budget. EERA requested that Summit provide additional information as part of its reply comments. EERA stated that it would review this additional information and provide a

³⁹ Ex. PUC-3 (Notice of Extended Comment Period).

⁴⁰ See, e.g., Comment by Green Plains Inc. (Oct. 4, 2022) (eDocket No. [202210-189537-01](#)); Comment by Devin Moler (Oct. 5, 2022) (eDocket No. [202210-189558-01](#)); Comment by Brian Kletscher (Oct. 5, 2022) (eDocket No. [202210-189556-01](#)); Comment by Evan Fagen (Oct. 5, 2022) (eDocket No. [202210-189588-01](#)); Comment by Consumer Energy Alliance (Oct. 10, 2022) (eDocket No. [202210-189664-01](#)); Comment by Susan Briese (Oct. 10, 2022) (eDocket No. [202210-189647-01](#)); Public Comment Batch (Oct. 10, 2022) (eDocket No. [202210-189639-01](#)); Comment by Bushmills Ethanol Inc (Oct. 11, 2022) (eDocket No. [202210-189672-01](#)); Comment by Granite Falls Energy LLC (Oct. 11, 2022) (eDocket No. [202210-189670-01](#)); Comment by Jim Tjepkema (Oct. 12, 2022) (eDocket No. [202210-189717-01](#)); Comment by Deborah K. Andresen (Oct. 12, 2022) (eDocket No. [202210-189716-01](#)); Comment by Christie Manning (Oct. 12, 2022) (eDocket No. [202210-189715-01](#)); Comment by Bill Adamski (Oct. 12, 2022) (eDocket No. [202210-189714-01](#)); Comment by Jean Ross (Oct. 12, 2022) (eDocket No. [202210-189713-01](#)); Comment by Paul and Irene Petersen (Oct. 12, 2022) (eDocket No. [202210-189712-01](#)); Comment by Catherine Knaeble (Oct. 12, 2022) (eDocket No. [202210-189711-01](#)); Comment by Bernadette Knaeble (Oct. 12, 2022) (eDocket No. [202210-189710-01](#)); Comment by Steve Petrich and Peg Furshong (Oct. 13, 2022) (eDocket No. [202210-189736-01](#)); Comment by Phillip Batalden (Oct. 13, 2022) (eDocket No. [202210-189735-02](#)); Comment by David William Leach (Oct. 14, 2022) (eDocket No. [202210-189761-01](#)); Comment by Pamela K. Jensen (Oct. 17, 2022) (eDocket No. [202210-189825-01](#)); Comment by American Coalition for Ethanol (Oct. 17, 2022) (eDocket No. [202210-189826-01](#)); Comment by Russell and Doreen Kronback (Oct. 17, 2022) (eDocket No. [202210-189827-02](#)); Comment by Larry Bruns (Oct. 17, 2022) (eDocket No. [202210-189828-02](#)); Comment by Doretta K. Reisenweber (Oct. 17, 2022) (eDocket No. [202210-189829-02](#)); Public Comment Batch (Oct. 17, 2022) (eDocket No. [202210-189831-01](#)); Comment by Sharon Leinen (Oct. 18, 2022) (eDocket No. [202210-189886-01](#)); Comment by Daniel Henriksen (Oct. 18, 2022) (eDocket No. [202210-189888-02](#)); Comment by Sharon Leinen (Oct. 17, 2022) (eDocket No. [202210-189894-01](#)); Comment by Marshall Area Chamber of Commerce (Oct. 20, 2022) (eDocket No. [202210-189991-01](#)); Comment by Elizabeth Hippert (Oct. 20, 2022) (eDocket No. [202210-189993-01](#)); Comment by Carol Coulter Schwarz (Oct. 20, 2022) (eDocket No. [202210-189994-01](#)); Comment by Diane Schroepfer (Oct. 20, 2022) (eDocket No. [202210-189995-02](#)); Comment by Larry Bruns (Oct. 21, 2022) (eDocket No. [202210-190041-01](#)); Public Comment Batch (Oct. 24, 2022) (eDocket No. [202210-190081-01](#)); Public Comment Batch (Oct. 25, 2022) (eDocket Nos. [202210-190108-01](#), [202210-190099-01](#), and [202210-190100-02](#)); Comment by The Nature Conservancy (Oct. 26, 2022) (eDocket No. [202210-190143-01](#)); Public Comment Batch (Oct. 27, 2022) (eDocket No. [202210-190170-01](#)); Comments by Fargo Moorhead West Fargo Chamber of Commerce (Oct. 31, 2022) (eDocket No. [202210-190260-02](#)); Public Comment Batch (Oct. 31, 2022) (eDocket No. [202210-190257-01](#)); Public Comment Batch (Oct. 31, 2022) (eDocket No. [202210-190258-01](#)); Public Comment Batch (Oct. 31, 2022) (eDocket No. [202210-190259-02](#)); Comment by PEER (Oct. 31, 2022) (eDocket No. [202210-190278-01](#)); and Comment by LIUNA (Oct. 31, 2022) (eDocket No. [202210-190283-01](#)).

recommendation on application completeness during the supplemental comment period.⁴¹

35. Also on October 31, 2022, MCEA and the Sierra Club filed comments recommending that the Commission order an EIS for the Project in lieu of the Comparative Environmental Analysis (CEA).⁴²

36. Also on October 31, 2022, Local 49 filed comments stating that they took no position on whether the use of alternative review is appropriate or whether a formal EIS is needed, and whether a contested case hearing or informal Commission process is preferred.⁴³

37. On November 1, 2022, the Commission filed a letter from the Environmental Quality Board (EQB) forwarding CURE's petition for an EAW and designating the Commission as the appropriate governmental unit for considering CURE's petition and listing the procedures to be followed in making the EAW decision.⁴⁴

38. On November 2, 2022, the Commission filed a letter to EQB discussing the Commission's plans to hold a public agenda meeting and simultaneously determine whether the application should be accepted and what to do with the petitions for EAW in late 2022 or very early in 2023.⁴⁵

39. On November 8, 2022, the Commission filed a response to the comments of the Mille Lacs Band of Ojibwe (MLBO) from November 1, 2022.⁴⁶

40. During the reply comment period ending November 14, 2022, public comments from various individuals and entities were filed regarding the Project.⁴⁷

41. On November 14, 2022, CURE filed reply comments in response to comments filed submitted by MLBO, Public Employees for Environmental Responsibility

⁴¹ Ex. DOC-1 (Completeness Comments and Recommendations).

⁴² Comments by MCEA and the Sierra Club (Oct. 31, 2022) (eDocket Nos. [202210-190274-01](#) and [202210-190274-02](#)).

⁴³ Comments by Local 49 (Oct. 31, 2022) (eDocket No. [202210-190273-01](#)).

⁴⁴ Ex. PUC-4 (Letter – EQB to PUC Regarding Citizen Petition for EAW); Ex. PUC-5 (CURE – Citizen Petition for EAW, Exhibits A-G, and Signatures).

⁴⁵ Ex. PUC-6 (Letter – PUC to EQB Regarding Citizen Petition for EAW).

⁴⁶ Ex. PUC-7 (Letter – PUC to MLBO).

⁴⁷ See, e.g., Public Comment Batch (Nov. 3, 2022) (eDocket No. [202211-190392-01](#)); Comment by Nicole Zempel (Nov. 4, 2022) (eDocket No. [202211-190422-01](#)); Public Comment Batch (Nov. 8, 2022) (eDocket No. [202211-190478-01](#)); Public Comment Batch (Nov. 9, 2022) (eDocket No. [202211-190523-02](#)); Public Comment Batch (Nov. 10, 2022) (eDocket No. [202211-190558-01](#)); Public Comment Batch (Nov. 1, 2022) (eDocket Nos. [202211-190301-01](#) and [202211-190302-01](#)); Comment by Maggie Rozycki (Nov. 1, 2022) (eDocket No. [202211-190295-03](#)); Comment by CURE (Nov. 1, 2022) (eDocket No. [202211-190295-02](#)); Comment by MLBO (Nov. 1, 2022) (eDocket No. [202211-190295-01](#)); Comment by Virginia Allie (Nov. 14, 2022) (eDocket No. [202211-190593-02](#)); Public Comment Batch (Nov. 14, 2022) (eDocket No. [202211-190590-02](#)); PEER Reply Comments (Nov. 14, 2022) (eDocket No. [202211-190619-01](#)).

(PEER), MCEA, Sierra Club, The Nature Conservancy, Minnesota Interfaith Power & Light (MNIPL), LIUNA, Local 49, and EERA.⁴⁸

42. Also on November 14, 2022, Summit filed reply comments in response to comments submitted by MLBO, CURE, The Nature Conservancy, LIUNA, PEER, MCEA, Sierra Club, Local 49, MNIPL, MCEA, American Coalition for Ethanol, Marshall Chamber of Commerce, Midwest Ag Future, and approximately 110 individuals.⁴⁹

43. On November 15, 2022, the Commission filed comments from MLBO regarding a consultation session with the Commission.⁵⁰

44. During the supplemental comment period ending November 21, 2022, public comments from various individuals and entities were filed regarding the Project.⁵¹

45. On November 21, 2022, CURE filed supplemental comments recommending that the Commission (1) determine that Summit's application is incomplete and direct the company to provide additional information about the existing environment and potential environmental and health and safety impacts of the proposed Project; (2) hold at least three public information sessions in each of the ten counties impacted by the proposed MCE Project and defer to tribes for their preferred method of consultation and engagement; (3) consider referring this docket to the Office of Administrative Hearings for a contested case hearing on unresolved issues including environmental impacts, human health and safety, and economic impacts of the Project as identified by commenters; (4) grant the citizen petition for an EAW, with the intent that it be used as a scoping document; and (5) order an EIS for the entire Minnesota footprint of the MCE Project.⁵²

46. Local 49 also filed supplemental comments recommending that the Commission reject the application as incomplete.⁵³

⁴⁸ CURE Reply Comments (Nov. 14, 2022) (eDocket Nos. [202211-190622-01](#), [202211-190622-02](#), and [202211-190622-03](#)).

⁴⁹ Summit Reply Comments (Nov. 14, 2022) (eDocket No. [202211-190618-01](#)).

⁵⁰ Comment by MLBO (Nov. 14, 2022) (eDocket No. [202211-190635-02](#)).

⁵¹ See, e.g., Comment by Alex Schultz (Nov. 17, 2022) (eDocket No. [202211-190712-01](#)); Public Comment Batch (Nov. 17, 2022) (eDocket No. [202211-190707-02](#)); Comment by Cottonwood County Board of Commissioners (Nov. 17, 2022) (eDocket No. [202211-190711-01](#)); Comment by Darwin Dyce (Nov. 18, 2022) (eDocket No. [202211-190738-02](#)); Comment by Ethan Nuss (Nov. 18, 2022) (eDocket No. [202211-190737-01](#)); PEER Supplemental Comments (Nov. 21, 2022) (eDocket No. [202211-190804-01](#)); Comments by Minnesota Environmental Partnership (MEP) (Nov. 21, 2022) (eDocket Nos. [202211-190790-01](#) and [202211-190790-02](#)); Comments by the Food & Water Watch and the Institute for Agriculture & Trade Policy (FWWIATP) (Nov. 21, 2022) (eDocket No. [202211-190788-01](#)); Public Comment Batch (Nov. 21, 2022) (eDocket No. [202211-190765-01](#)); Public Comment Batch (Nov. 21, 2022) (eDocket Nos. [202211-190831-01](#) and [202211-190830-02](#)); and Public Comment Batch (Nov. 23, 2022) (eDocket Nos. [202211-190866-02](#) and [202211-190865-01](#)).

⁵² CURE Supplemental Comments (Nov. 21, 2022) (eDocket No. [202211-190813-01](#)).

⁵³ Local 49 Supplemental Comments (Nov. 21, 2022) (eDocket No. [202211-190812-01](#)).

47. MCEA and the Sierra Club filed supplemental comments recommending that the Commission order an EIS for the Project in lieu of the CEA, recommending that the EIS assess all segments of the MCE Project together as a phased action, and supporting other parties' requests for additional time and opportunity for public engagement to ensure all who are affected by this Project are able to participate and have their input considered.⁵⁴ The Sierra Club also submitted a batch of 326 public comments regarding the Project.⁵⁵

48. Summit filed supplemental comments in response to comments filed through the November 14, 2022 reply period deadline and requested that the Commission (1) accept the Application as complete; (2) issue a notice and order for hearing directing the administrative law judge to establish a schedule similar to that proposed by the EERA staff; and (3) dismiss the citizen petition for an EAW and request that EERA proceed with preparation of a CEA for the Project.⁵⁶

49. EERA filed supplemental comments recommending that the Commission accept the application as complete. EERA also stated that a CEA, rather than a scoping EAW and EIS, is the appropriate form of environmental review for the Project and stated that the Commission did not need to make a decision regarding schedule.⁵⁷

50. After the close of the supplemental comment period, the Commission submitted additional public comments: comments from the members of the Midwest Ag Future coalition in support of the Project;⁵⁸ a comment from White Earth Nation regarding the Project;⁵⁹ comments from members of the Midwest Ag Future coalition in support of the Project;⁶⁰ a comment from Hyacinth Balzer asking the Commission to commit to a full EIS for the Project;⁶¹ and comments from a representative of Delta Constructors, LLC in support of the Project.⁶²

51. On January 18, 2023, the Commission filed the sample routing permit.⁶³

52. On February 6, 2023, the Commission issued an order accepting the Application as substantially complete; requiring an EIS; including the preparation of a scoping EAW as required by Minn. R. 4410.2100); denying CURE's petition for an EAW; referring the matter to the Office of Administrative Hearings for a hearing; and,

⁵⁴ MCEA and the Sierra Club (Nov. 21, 2022) (eDocket No. [202211-190810-01](#) and [202211-190810-02](#)).

⁵⁵ Comments by the Sierra Club (Nov. 21, 2022) (eDocket No. [202211-190798-01](#)).

⁵⁶ Summit Supplemental Comments (Nov. 21, 2022) (eDocket No. [202211-190807-01](#)).

⁵⁷ EERA Supplemental Comments (Nov. 21, 2022) (eDocket No. [202211-190791-01](#)).

⁵⁸ Comments by Midwest Ag Future (Nov. 28, 2022) (eDocket No. [202211-190888-01](#)).

⁵⁹ Comment by White Earth Nation (Nov. 29, 2022) (eDocket No. [202211-190933-01](#)).

⁶⁰ Comment by Midwest Ag Future (Dec. 2, 2022) (eDocket No. [202212-191074-01](#)); Comment by Midwest Ag Future (Dec. 9, 2022) (eDocket No. [202212-191213-02](#)); Comment by Midwest Ag Future (Dec. 23, 2022) (eDocket No. [202212-191616-01](#)); Comments by Midwest Ag Future (Jan. 19, 2023) (eDocket No. [20231-192325-01](#)); Comments by Midwest Ag Future (Jan. 30, 2023) (eDocket No. [20231-192672-01](#)).

⁶¹ Comment by Hyacinth Balzer (Dec. 9, 2022) (eDocket No. [202212-191226-02](#)).

⁶² Comment by Delta Constructors, LLC (Dec. 29, 2022) (eDocket No. [202212-191707-01](#)).

⁶³ Ex. PUC-8 (Sample Pipeline Routing Permit).

providing notice and order for a hearing, and addressed various other administrative matters.⁶⁴ The order also approved the Department's initial budget estimate of \$150,000 for application processing.

53. On February 14, 2023, the Commission filed a letter to the State Historic Preservation Office (SHPO) requesting comments from the agency and outlining the procedure for further consultation with the Commission.⁶⁵

54. On February 22, 2023, Summit filed the notice of appearance of Christina K. Brusven, Patrick D.J. Mahlberg, Ryan Cox, and Jess Vilsack.⁶⁶

55. On February 27, 2023, CURE filed a petition for a rehearing or reconsideration of the Commission's denial of the citizen petition for an EAW, pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000.⁶⁷

56. On February 28, 2023, Summit filed confirmation that it had complied with the notice requirements of Minn. R. 7852.2000 and Minn. Stat. § 216G.02 and provided notice letters and, as applicable, copies of the Application accepted by the Commission.⁶⁸

57. Also on February 28, 2023, CURE filed the Notice of Appearance for Sarah Mooradian.⁶⁹

58. On March 1, 2023, CURE filed a Petition to Intervene.⁷⁰

59. On March 8, 2023, EERA filed a letter notifying the Commission that Summit had provided completed data portions of the EAW.⁷¹

60. On March 9, 2023, Summit filed an answer to CURE's petition for reconsideration.⁷²

61. On March 10, 2023, CEO filed a notice of appearance for Amelia Vohs.⁷³

62. On March 21, 2023, the Commission filed public comments from members of the Midwest Ag Future coalition.⁷⁴

⁶⁴ Ex. PUC-9 (Order Accepting Application, Requiring Environmental Impact Statement, and Denying Petition; Notice of and Order For Hearing).

⁶⁵ Ex. PUC-10 (Letter – PUC to SHPO).

⁶⁶ Notice of Appearance (Feb. 22, 2023) (eDocket No. [20232-193352-01](#)).

⁶⁷ CURE Petition for Reconsideration and Rehearing (Feb. 27, 2023) (eDocket No. [20232-193462-01](#)).

⁶⁸ Ex. Summit-6 (Compliance Filing – Application Acceptance).

⁶⁹ Notice of Appearance (Feb. 28, 2023) (eDocket No. [20232-193468-01](#)).

⁷⁰ CURE Petition to Intervene (March 1, 2023) (eDocket No. [20233-193559-01](#)).

⁷¹ Ex. DOC-2 (Notice of Scoping Environmental Assessment Worksheet Information Submittal).

⁷² Ex. Summit-7 (Answer to Petition for Reconsideration).

⁷³ CEO Notice of Appearance (March 9, 2023) (eDocket No. [20233-193824-01](#), [20233-193824-02](#), and [20233-193824-03](#)).

63. On March 30, 2023, the Commission issued an order denying CURE's petition for reconsideration.⁷⁵

64. On April 10, 2023, the Commission filed the Scoping EAW for the Project⁷⁶ and a letter confirming that the EERA, acting on behalf of the Commission, received the complete data portions of the EAW.⁷⁷

65. On April 11, 2023, EERA filed a Draft Scoping Decision Document (DSDD) for the Project.⁷⁸

66. On April 12, 2023, the Commission filed a memo to the EQB distribution list.⁷⁹

67. On April 18, 2023, the Commission filed a Notice of Application Acceptance, Public Information and Scoping Meetings, and Availability of Scoping EAW and DSDD. The Commission scheduled public information and scoping meetings on May 2 and 3, 2023 (in-person) and May 4, 2023 (via remote access). The Commission noted that it would accept comments through May 18, 2023, and that comments could include alternative routes or route segments as well as requests as to what should be studied in the EIS.⁸⁰

68. The Notice of Availability of the Scoping EAW and DSDD, including notice of the public information and scoping meetings, was published in the *EQB Monitor* on April 18, 2023.⁸¹ Copies of the scoping EAW were sent to the Fergus Falls Public Library, Viking Library System, and Breckenridge Public Library in accordance with Minn. R. 4410.1500.⁸²

69. On April 18 and 19, 2023, notice of the public information and scoping meetings was published in the *Wahpeton Daily News* and *Fergus Falls Daily Journal*, respectively.⁸³

70. On April 20, 2023, the Administrative Law Judge issued an order granting CURE's Petition to Intervene as a party with full rights.⁸⁴

⁷⁴ Comment by members of the Midwest Ag Future coalition (March 21, 2023) (eDocket No. [20233-194123-01](#)).

⁷⁵ Ex. PUC-11 (Order Denying Petition for Reconsideration).

⁷⁶ Exs. PUC-13 (Scoping EAW and public Appendices A–J) and PUC-14 (Scoping EAW – Nonpublic Appendix G).

⁷⁷ Ex. PUC-12 (Letter – PUC to Summit).

⁷⁸ Ex. DOC-3 (DSDD).

⁷⁹ Ex. PUC-15 (Memo to EQB Distribution List).

⁸⁰ Ex. PUC-16 (Notice of Application Acceptance).

⁸¹ Ex. PUC-17 (EQB Monitor Notice of Availability of Scoping EAW and DSDD).

⁸² Ex. DOC-4 (Notice of DSDD).

⁸³ Ex. PUC-18 (Affidavits of Publication – Scoping Meeting).

⁸⁴ Order Granting Intervention (April 20, 2023) (eDocket No. [20234-195038-01](#)).

71. On April 27, 2023, Summit filed scoping comments proposing minor route modifications for the Project.⁸⁵

72. On May 2 and 3, 2023, the Commission and EERA staff held public information and scoping meetings in-person to provide the public with information about the Project and to solicit comments on the scope of the EIS.

73. On May 4, 2023, the Commission and EERA staff held a public information and scoping meeting via remote-access to provide the public with information about the Project and to solicit comments on the scope of the EIS.

74. On May 11, 2023, the Administrative Law Judge issued an order scheduling a prehearing conference on June 2, 2023.⁸⁶

75. During the public comment period ending May 18, 2023, scoping comments were submitted by a number of individuals and entities.⁸⁷ EERA filed a batch of scoping comments from members of the public regarding the Project.⁸⁸

76. Additionally, scoping comments were filed by the Minnesota Department of Agriculture (MDA).⁸⁹ Minnesota Department of Natural Resources (DNR) also submitted comments on the DSDD and Scoping EAW and also offered comments regarding potential methods to minimize, mitigate, or avoid potential environmental impacts.⁹⁰ The Minnesota Department of Transportation (MnDOT) also filed comments regarding placing the pipeline across a trunk highway and the relevant permits needed from MnDOT for construction and maintenance of the Project.⁹¹

77. On May 18, 2023, CURE submitted comments on the Scoping EAW and DSDD.⁹²

78. Also on May 18, 2023, MCEA and the Sierra Club, with support from FWWIATP, submitted comments on the DSDD and Scoping EAW.⁹³ The CEO also submitted a notice of appearance for Stephanie Fitzgerald.⁹⁴

⁸⁵ Ex. Summit-8 at 2–3 (Comments).

⁸⁶ Order for Prehearing Conference (May 11, 2023) (eDocket No. [20235-195782-01](#)).

⁸⁷ See, e.g., Comments by CEA (May 8, 2023) (eDocket No. [20235-195706-01](#)); Comment by Gary Veenstra (May 15, 2023) (eDocket No. [20235-195822-01](#)); Comments by LIUNA (May 18, 2023) (eDocket No. [20235-195972-01](#)); Comment by PEER (May 18, 2023) (eDocket Nos. [20235-195970-01](#), [20235-195970-02](#), and [20235-195970-03](#)); Comment by Bold Alliance (May 18, 2023) (eDocket No. [20235-195966-01](#)); Comment by the Nature Conservancy (May 19, 2023) (eDocket No. [20235-195984-01](#)).

⁸⁸ Ex. DOC-6 (Scoping Public Comments Received by Department).

⁸⁹ Ex. MDA-1 (MDA Comments).

⁹⁰ Ex. DNR-1 (DNR Comments).

⁹¹ Ex. MnDOT-1 (MnDOT Comments).

⁹² Ex. CURE-4 (CURE comments on Scoping EAW and DSDD).

⁹³ Ex. CEO-1 (Comments on Scoping EAW and DSDD).

79. Also on May 18, 2023, Summit submitted comments on the DSDD and Scoping EAW.⁹⁵

80. Also on May 18, 2023, Local 49 submitted comments on the Scoping EAW for the Project.⁹⁶

81. On May 25 and 31, 2023, the EERA filed notices of appearance for Richard Dornfeld⁹⁷ and Katherine Hinderlie, respectively.⁹⁸

82. On June 1, 2023, Local 49 submitted a petition for intervention.⁹⁹

83. On June 2, 2023, Local 49 filed a notice of appearance for Charles Sutton.¹⁰⁰

84. On June 16, 2023, the Administrative Law Judge issued the First Prehearing Order setting the schedule of proceedings.¹⁰¹ The Administrative Law Judge also granted Local 49's Petition to Intervene as a party with full rights.¹⁰²

85. On June 26, 2023, the CEO filed a notice of withdrawal of Stephanie Fitzgerald.¹⁰³

86. On June 27, 2023, EERA filed a letter stating that it anticipated filing its comments and recommendations, public scoping comments summary, and revised draft scoping decision for the Commission's consideration on or before July 21, 2023.¹⁰⁴

87. On July 20, 2023, EERA filed a letter stating that it required additional time to finalize its comments and a revised draft scoping decision, which it anticipated filing on or before August 4, 2023.¹⁰⁵

88. On August 2, 2023, EERA filed its comments and recommendations summarizing the scoping process, the comments received and alternatives proposed, and the issues and alternatives EERA staff recommends be included in the final scoping

⁹⁴ CEO Notice of Appearance (May 18, 2023) (eDocket Nos. [20235-195922-01](#), [20235-195922-02](#), and [20235-195922-03](#)).

⁹⁵ Ex. Summit-9 (Scoping Comments).

⁹⁶ Local 49 Comments (May 18, 2023) (eDocket No. [20235-195920-01](#)).

⁹⁷ EERA Notice of Appearance (May 25, 2023) (eDocket No. [20235-196121-01](#)).

⁹⁸ EERA Notice of Appearance (May 31, 2023) (eDocket No. [20235-196232-01](#)).

⁹⁹ Local 49 Petition for Intervention (June 1, 2023) (eDocket No. [20236-196318-02](#)).

¹⁰⁰ Local 49 Notice of Appearance (June 2, 2023) (eDocket No. [20236-196374-01](#)).

¹⁰¹ First Prehearing Order (June 16, 2023) (eDocket No. [20236-196636-02](#)).

¹⁰² Order Granting Intervention Petition of Local 49 (June 16, 2023) (eDocket No. [20236-196636-01](#)).

¹⁰³ CEO Notice of Withdrawal (June 26, 2023) (eDocket No. [20236-196846-01](#)).

¹⁰⁴ EERA Letter (June 27, 2023) (eDocket No. [20236-196945-01](#)).

¹⁰⁵ EERA Letter (July 20, 2023) (eDocket No. [20237-197632-01](#)).

decision for the EIS to be prepared for the Project. EERA also provided a Revised DSDD.¹⁰⁶

89. On August 11, 2023, the Commission filed an Ex Parte Communication Report.¹⁰⁷

90. On August 17, 2023, CURE filed a request for a variance and extension in the schedule for the proceedings.¹⁰⁸

91. On August 25, 2023, Summit filed reply comments in response to CURE's request to stay the instant proceeding styled as an extension variance request.¹⁰⁹

92. On August 24, 2023, LIUNA filed reply comments expressing that it saw no merit in the request by CURE to suspend the proceedings.¹¹⁰

93. On August 25, 2023, CURE filed comments asking the Commission to allow commenters a brief amount of time for opening statements before deciding on the scope of the EIS.¹¹¹

94. On August 28, 2023, CURE filed a notice of appearance for Hudson Kingston.¹¹²

95. On August 30, 2023, EERA filed a letter identifying an error in the Revised DSDD, noting that on page 11 of the Revised DSDD, it should state that the "EIS will consider all reasonable mitigation measures suggested through public comment".¹¹³

96. On August 31, 2023, CEO filed a Petition to Intervene.¹¹⁴

97. On September 8, 2023, the Administrative Law Judge issued an order scheduling a prehearing conference for September 14, 2023.¹¹⁵

98. On September 19, 2023, the Administrative Law Judge issued a second prehearing order.¹¹⁶

¹⁰⁶ Ex. DOC-7 (Scoping Comments and Recommendations).

¹⁰⁷ Ex. PUC-19 (Ex Parte Communication).

¹⁰⁸ CURE Request for a Variance and Extension (Aug. 17, 2024) (eDocket Nos. [20238-198340-01](#) and [20238-198340-02](#)).

¹⁰⁹ Ex. Summit-10 (Reply Comments – Stay Request).

¹¹⁰ LIUNA Reply Comments (Aug. 24, 2023) (eDocket No. [20238-198485-01](#)).

¹¹¹ CURE Comments (Aug. 25, 2023) (eDocket Nos. [20238-198484-01](#) and [20238-198484-02](#)).

¹¹² CURE Notice of Appearance (Aug. 28, 2023) (eDocket Nos. [20238-198560-01](#) and [20238-198560-02](#)).

¹¹³ Ex. DOC-8 (Notice of Error in Revised DSDD).

¹¹⁴ CEO Petition to Intervene (Aug. 31, 2023) (eDocket Nos. [20238-198653-01](#), [20238-198653-02](#), [20238-198653-03](#)).

¹¹⁵ Order for a Prehearing Conference (Sept. 8, 2023) (eDocket No. [20239-198821-01](#)).

¹¹⁶ Second Prehearing Order (Sept. 19, 2023) (eDocket No. [20239-199031-01](#)).

99. On September 25, 2023, the Administrative Law Judge issued an order granting the intervention petition of CEO.¹¹⁷

100. On September 26, 2023, the Commission filed an order approving the Revised DSDD, as modified, as the final scoping decision for the Project. The Commission's order also denied CURE's request to suspend the proceedings.¹¹⁸

101. On September 26, 2023, the EIS preparation notice was published in the *EQB Monitor*.¹¹⁹

102. On September 26 and 27, 2023, the EIS preparation notice was published in the *Wahpeton Daily News* and the *Fergus Falls Daily Journal*, respectively.¹²⁰

103. On October 5, 2023, EERA issued the Final Scoping Decision Document (FSDD) for the Project.¹²¹

104. On December 14, 2023, EERA filed notice of withdrawal of Katherine Hinderlie as counsel of record for the DOC.¹²²

105. On January 23, 2024, EERA issued the Draft Environmental Impact Statement (DEIS).¹²³ EERA also filed the Notice of the DEIS and Public Information Meetings scheduling two in-person hearings in Breckenridge, Minnesota on February 6, 2024, and Fergus Falls, Minnesota, on February 7, 2024, and a remote hearing via Webex on February 8, 2024. The notice also established a comment period through February 23, 2024, soliciting comments on what information needs to be clarified or included in the DEIS to ensure that the Final Environmental Impact Statement (FEIS) is complete and accurate.¹²⁴ Copies of the DEIS were sent to the Legislative Reference Library, the Breckenridge Public Library, and the Fergus Falls Public Library.¹²⁵

106. On January 23, 2024, Notice of the DEIS and Public Information Meetings was published in the *EQB Monitor*.¹²⁶

107. On January 23 and 24, 2024, Notice of the DEIS and Public Information Meetings was published in the *Wahpeton Daily News* and the *Fergus Falls Daily Journal*, respectively.¹²⁷

¹¹⁷ Order Granting Intervention Petition of CEO (Sept. 25, 2023) (eDocket No. [20239-199130-01](#)).

¹¹⁸ Ex. PUC-20 (Order Approving Scope of Environmental Review and Denying Stay).

¹¹⁹ Ex. DOC-9 (Notice of EIS Preparation).

¹²⁰ Ex. DOC-11 (Notice of EIS Preparation).

¹²¹ Ex. DOC-10 (FSDD).

¹²² EERA Withdrawal Notice (Dec. 14, 2023) (eDocket No. [202312-201226-01](#)).

¹²³ Ex. DOC-13 (DEIS).

¹²⁴ Ex. DOC-12 (Notice of DEIS Public Information Meetings).

¹²⁵ Ex. DOC-22 (Mailings to Libraries of the DEIS and FEIS).

¹²⁶ Ex. DOC-20 (EQB Monitor Notice for DEIS).

¹²⁷ Ex. DOC-21 (Newspaper Publication of DEIS Notice).

108. On January 23, 2024, Summit submitted an Affidavit of David Daum providing an update to Summit's authorized representative or agent for the Project and requested to update the service list.¹²⁸

109. On January 26, 2024, EERA issued a news release regarding the DEIS availability.¹²⁹

110. On January 31, 2024, EERA filed a notice to landowners regarding DEIS availability and public meetings.¹³⁰

111. On February 13, 2024, Summit filed direct testimonies of James Powell, Scott O'Konek, Jason Zoller, Alexander Lange, and Dr. Michael Lumpkin.¹³¹ Summit also filed comments on the DEIS.¹³²

112. Also on February 13, 2024, CURE filed direct testimonies of Drs. Christy Dolph, John Gorman, Emily Grubert, and Silvia Secchi.¹³³

113. During the comment period ending February 23, 2024, comments on the DEIS were submitted by a number of individuals and entities.¹³⁴ Comments were also submitted by the Minnesota Pollution Control Agency (MPCA),¹³⁵ the DNR,¹³⁶ City of Lamberton City Council,¹³⁷ LIUNA,¹³⁸ MCEA,¹³⁹ and the Local 49.¹⁴⁰

¹²⁸ Summit Update to Authorized Representative and Request to Update Service List (Jan. 23, 2024) (eDocket No. [20241-202521-01](#)).

¹²⁹ Ex. DOC-19 (News Releases for DEIS and FEIS; EQB Monitor Notice for FEIS).

¹³⁰ Ex. DOC-14 (Notice of Availability of DEIS and Public Information Meetings).

¹³¹ Exs. Summit-11 (Powell Direct), Summit-12 (O'Konek Direct), Summit-13 (Zoller Direct), Summit-14 (Lange Direct), and Summit-15 (Lumpkin Direct).

¹³² Ex. Summit-16 (DEIS Comments).

¹³³ Exs. CURE-5 (Gorman Direct), CURE-6 (Dolph Direct), CURE-7 (Secchi Direct), and CURE-8 (Grubert Direct).

¹³⁴ See, e.g., Midwest Ag Future (Feb. 22, 2024) (eDocket Nos. [20242-203715-01](#), [20242-203715-02](#), and [20242-203715-03](#)); Legalectric Comments (Feb. 23, 2024) (eDocket No. [20242-203790-01](#)); Comment by DJ Omang (Feb. 23, 2024) (eDocket No. [20242-203763-01](#)); Comment by Donald Heinzer (Feb. 23, 2024) (eDocket No. [20242-203762-01](#)); Comment by Doug Franzen (Feb. 23, 2024) (eDocket No. [20242-203761-01](#)); Comment by Garritt Thomssen (Feb. 23, 2024) (eDocket No. [20242-203760-01](#)); Comment by Ryan Davies (Feb. 23, 2024) (eDocket No. [20242-203753-01](#)); Comment by Shane Warden (Feb. 23, 2024) (eDocket No. [20242-203752-01](#)); Comment by Verlynn Schmalte (Feb. 26, 2024) (eDocket No. [20242-203808-01](#)); Schmalte Comment (Feb. 28, 2024) (eDocket Nos. [20242-203892-01](#), [20242-203892-02](#), [20242-203892-03](#), [20242-203892-04](#), [20242-203892-05](#), [20242-203892-06](#), [20242-203892-07](#), [20242-203892-08](#), and [20242-203892-09](#)); City of Lamberton City Council (Feb. 21, 2024) (eDocket No. [20242-203687-01](#)).

¹³⁵ Ex. PUC-21 (Public Comment – MPCA).

¹³⁶ DNR Comments (Feb. 23, 2024) (eDocket No. [20242-203780-01](#)).

¹³⁷ City of Lamberton City Council (Feb. 21, 2024) (eDocket No. [20242-203687-01](#)).

¹³⁸ LIUNA Comments (Feb. 23, 2024) (eDocket No. [20242-203792-01](#)).

¹³⁹ Exs. CEO-2 (MCEA DEIS Comments), CEO-3 (Attachment 1 to MCEA DEIS Comments), CEO-4 (Attachment 2 to MCEA DEIS Comments), CEO-5 (Attachment 3 to MCEA DEIS Comments), and CEO-6 (Attachment 4 to MCEA DEIS Comments).

¹⁴⁰ Local 49 Comments (Feb. 23, 2024) (eDocket No. [20242-203742-01](#)).

114. On February 26, 2024, CURE filed comments on the DEIS.¹⁴¹

115. On February 27, 2024, the Commission filed a batch of public comments and an individual comment from a member of the public.¹⁴²

116. On March 4, 2024, EERA filed a letter requesting that the Commission certify an updated budget of \$1,900,000 for the Project.¹⁴³

117. On March 13, 2024, Summit filed a response to EERA's certification of an updated budget request.¹⁴⁴

118. On March 14, 2024, Summit submitted rebuttal testimony of James Powell, Jason Zoller, Alexander Lange, Benjamin Nelson, Aaron J. DeJoia, and Brad Piggott.¹⁴⁵

119. Also on March 14, 2024, CURE submitted rebuttal testimony of Drs. Christy Dolph, John Gorman, Zeke McKinney, and Silvia Secchi.¹⁴⁶

120. On March 15, 2024, EERA submitted a batch of comments from members of the public regarding the DEIS for the Project.¹⁴⁷ Also, EERA filed a notice of appearance of Katherine Arnold.¹⁴⁸

121. On March 19, 2024, Summit filed a Motion to Suspend Procedural Schedule to allow time to resolve issues related to EERA's budget certification request and complete the FEIS.¹⁴⁹

122. On March 19, 2024, the Commission filed the Notice of Comment Period inviting the public to comment on whether the Commission should certify the expenses in excess of the approved budget under Minn R. 7852.4000. The notice stated that the Commission would accept written initial comments through March 27, 2024, and reply comments through April 3, 2024.¹⁵⁰

¹⁴¹ Ex. CURE-1 (CURE comments on DEIS; Attachments 1–4).

¹⁴² See, e.g., Public Comment Batch (Feb. 27, 2024) (eDocket No. [20242-203848-01](#)); Comment by Tim Wulling (Feb. 27, 2024) (eDocket No. [20242-203846-01](#)).

¹⁴³ EERA Letter (March 4, 2024) (eDocket No. [20243-204058-01](#)).

¹⁴⁴ Ex. Summit-17 (Response – EERA Budget Letter).

¹⁴⁵ Exs. Summit-18 (Powell Rebuttal), Summit-19 (Zoller Rebuttal), Summit-20 (Lange Rebuttal), Summit-21 (Nelson Rebuttal), Summit-22 (DeJoia Rebuttal), and Summit-23 (Piggott Rebuttal).

¹⁴⁶ Exs. CURE-9 (Gorman Rebuttal), CURE-10 (Dolph Rebuttal), CURE-10, CURE-11 (Zeke Rebuttal), and CURE-12 (Secchi Rebuttal).

¹⁴⁷ Ex. DOC-15 (DEIS Public Comments Received by Department).

¹⁴⁸ EERA Notice of Appearance (March 15, 2024) (eDocket No. [20243-204377-01](#) and [20243-204377-02](#)).

¹⁴⁹ Ex. Summit-24 (Motion to Suspend Procedural Schedule, Proposed Order, and Filing Letters).

¹⁵⁰ Ex. PUC-22 (Notice of Comment Period on EERA's Updated Budget Estimate).

123. On March 21, 2024, the Administrative Law Judge issued an order setting a deadline to response to Summit's motion for March 28, 2024.¹⁵¹

124. On March 26, 2024, Local 49 provided comments on whether to certify the expenses in excess of the approved budget.¹⁵²

125. On March 27, 2024, MCEA filed comments discussing whether the Commission should certify the increased expenses incurred in conducting a FEIS in excess of the budget approved under Minn. R. 7852.4000.¹⁵³ Also, Summit filed initial comments regarding EERA's request to certify an updated budget for the Project.¹⁵⁴ EERA also submitted initial comments regarding certification of a budget for the environmental review and permitting process for the Project.¹⁵⁵ CURE also submitted comments in support of EERA's request for the Commission to certify the updated expenses.¹⁵⁶ Additionally, EERA filed comments that were submitted by MCEA providing new information to be added to the record on the DEIS outside of the comment period.¹⁵⁷

126. On March 28, 2024, Summit filed surrebuttal testimony for Scott O'Konek, Jason Zoller, and Dr. Michael Lumpkin.¹⁵⁸ CURE also filed surrebuttal testimony for Drs. Christy Dolph, John Gorman, Emily Grubert, and Silvia Secchi.¹⁵⁹

127. On March 28, 2024, LIUNA filed comments regarding the estimated costs associated with the preparation of an EIS for the Project.¹⁶⁰

128. On March 29, 2024, the Administrative Law Judge issued an order suspending the procedural schedule and directing the parties to confer on a proposed revised schedule and identify a date and time for a prehearing conference when the EERA's updated budget is final and when and a timeline for the FEIS is confirmed.¹⁶¹

129. On April 3, 2024, Summit filed reply comments regarding EERA's request to certify an updated budget for the Project and in response to initial comments submitted by MCEA, CURE, and Ms. Amanda Stamp.¹⁶²

¹⁵¹ Order Setting Motion Response Deadline (March 21, 2024) (eDocket No. [20243-204561-01](#)).

¹⁵² Local 49 Comments (March 26, 2024) (eDocket No. [20243-204666-01](#)).

¹⁵³ Ex. CEO-7 (MCEA Comment on Budget Expenses).

¹⁵⁴ Ex. Summit-25 (Comments – EERA Budget Request).

¹⁵⁵ Ex. DOC-16 (MCEA DEIS Public Comment Received by Department).

¹⁵⁶ CURE Comments (March 27, 2024) (eDocket No. [20243-204690-01](#)).

¹⁵⁷ Ex. CEO-8 (Public Comment-Outside Comment Period-MCEA).

¹⁵⁸ Exs. Summit-26 (O'Konek Surrebuttal) and (Errata to Page 2 of O'Konek Surrebuttal), Summit-27 (Zoller Surrebuttal), and Summit-28 (Lumpkin Surrebuttal).

¹⁵⁹ Exs. CURE-13 (Gorman Surrebuttal), CURE-14 (Dolph Surrebuttal), CURE-15 (Grubert Surrebuttal), and CURE-16 (Secchi Surrebuttal).

¹⁶⁰ LIUNA Comments (March 28, 2023) (eDocket No. [20243-204707-01](#)).

¹⁶¹ Order Suspending Schedule (March 29, 2024) (eDocket No. [20243-204800-01](#)).

¹⁶² Ex. Summit-29 (Reply Comments – EERA Budget Request).

130. On April 10, 2024, the Commission issued an order certifying a revised budget of \$1,382,000 for the Project.¹⁶³

131. On May 15, 2024, Summit filed a letter consenting to an extension of the schedule for preparation of the EIS that exceeds the 280-day timeframe set forth in Minn. Stat. § 116D.04, subd. 2a(j).¹⁶⁴ Also, CURE filed a letter in support of the MCEA's March 26, 2024, letter and to propose additional information to be included in the EIS outside of the public comment period.¹⁶⁵

132. Also on May 15, 2024, the Administrative Law Judge issued an order setting a prehearing conference for May 24, 2024.¹⁶⁶

133. On May 29, 2024, the Administrative Law Judge issued a third prehearing order modifying the schedule for the proceedings.¹⁶⁷

134. On June 6, 2024, EERA filed a letter requesting that the Commission certify an updated budget of \$2,000,000 for the Project, based upon estimated total expenditures of \$1,918,170 and to avoid the need to seek another budget recertification.¹⁶⁸

135. On June 7, 2024, the Commission filed a Notice of Comment Period providing for initial comments on whether the Commission should certify the expenses in excess of the approved budget under Minn R. 7852.4000 to be filed by June 14, 2024, and reply comments by June 19, 2024.¹⁶⁹

136. On June 14, 2024, MCEA filed comments on whether the Commission should certify the increased expenses incurred in conducting a FEIS for the Project.¹⁷⁰

137. EERA filed a motion requesting that the Administrative Law Judge address the adequacy of the FEIS in their findings of fact and conclusions and recommendations and to consolidate the deadlines for comments on the adequacy of the FEIS with the subsequent public comment deadline.¹⁷¹

138. The Commission filed the non-public version of Appendix G to the EAW.¹⁷²

¹⁶³ Ex. PUC-23 (Order Certifying Budget).

¹⁶⁴ Ex. Summit-30 (Letter – Extension of EIS Schedule).

¹⁶⁵ Ex. CURE-2 (CURE Supplemental Comments on DEIS).

¹⁶⁶ Order for Prehearing Conference (May 15, 2024) (eDocket No. [20245-206754-01](#)).

¹⁶⁷ Third Prehearing Order (May 29, 2024) (eDocket No. [20245-207201-01](#)).

¹⁶⁸ EERA Letter (June 6, 20224) (eDocket No. [20246-207453-01](#)).

¹⁶⁹ Ex. PUC-24 (Notice of Comment Period on EERA's Revised Budget Estimate).

¹⁷⁰ MCEA Comments (June 14, 2024) (eDocket No. [20246-207727-01](#)).

¹⁷¹ EERA Motion (June 14, 2024) (eDocket Nos. [20246-207717-01](#) and [20246-207717-02](#)).

¹⁷² Ex. PUC-13 (Scoping EAW and public Appendices A–J).

139. On June 20, 2024, CURE filed reply comments in support of EERA's request for the Commission to certify the updated expenses.¹⁷³

140. On June 24, 2024, Local 49 provided comments on whether to certify the expenses in excess of the approved budget under Minn R. 7852.400.¹⁷⁴

141. On June 25, 2024, Commission issued an order certifying a revised budget of \$2,000,000 for the Project.¹⁷⁵

142. On July 5, 2024, the Administrative Law Judge issued a fourth prehearing order modifying the procedural schedule for the proceedings.¹⁷⁶

143. On July 16, 2024, the Commission filed a comment from a member of the public submitted outside of the comment period.¹⁷⁷

144. On July 19, 2024, Summit filed a compliance filing demonstrating compliance with Minn. R. 1405.1900 regarding its prefiled testimony.¹⁷⁸

145. On July 31, 2024, EERA filed the FEIS for the Project.¹⁷⁹

146. On August 1, 2024, the Commission issued a Notice of Public and Evidentiary Hearing and FEIS Availability, scheduling an in-person public hearing in Fergus Falls, Minnesota, on August 20, 2024, a remote public hearing via Webex on August 21, 2024, and an evidentiary hearing on August 22-23, 2024. The notice also established a comment period through September 11, 2024, soliciting comments on whether the Commission should find that the FEIS is adequate, whether the Commission should grant a Route Permit for the Project and, if so, what additional conditions or requirements should be included in the Route Permit.¹⁸⁰ Copies of the FEIS were sent to the Legislative Reference Library, the Breckenridge Public Library, and the Fergus Falls Public Library.¹⁸¹

147. On August 3, 2024, Notice of Public and Evidentiary Hearing and FEIS Availability was published in the *Fergus Falls Daily Journal* and the *Wahpeton Daily News*.¹⁸²

¹⁷³ CURE Reply Comments (June 20, 2024) (eDocket No. [20246-207817-01](#)).

¹⁷⁴ Local 49 Comments (June 24, 2024) (eDocket No. [20246-207886-01](#)).

¹⁷⁵ Ex. PUC-25 (Order Accepting Revised Budget).

¹⁷⁶ Fourth Prehearing Order (July 5, 2024) (eDocket No. [20247-208353-01](#)).

¹⁷⁷ Comment by Kent Pickrell (July 16, 2024) (eDocket No. [20247-208659-01](#)).

¹⁷⁸ Ex. Summit-32 (Prefiled Testimony).

¹⁷⁹ Ex. DOC-18 (FEIS).

¹⁸⁰ Ex. PUC-26 (Notice of Public and Evidentiary Hearings and FEIS Availability).

¹⁸¹ Ex. DOC-22 (Mailings to Libraries of the DEIS and FEIS).

¹⁸² Ex. PUC-27 (Affidavits of Publication).

148. On August 13, 2024, Notice of Public and Evidentiary Hearing and FEIS Availability was published in the *EQB Monitor*.¹⁸³ Also on August 13, 2024, EERA issued a news release regarding the FEIS availability.¹⁸⁴

149. On August 15, 2024, Summit submitted an erratum filing with one correction to the pre-filed surrebuttal testimony of Scott O’Konek.¹⁸⁵

150. Also on August 15, 2024, the CEO filed a notice of appearance for Abigail Hencheck.¹⁸⁶

151. On August 19, 2024, the Commission filed the master exhibit list for the public and evidentiary hearings.¹⁸⁷

152. Also on August 19, 2024, EERA filed the certificates of notice and distribution for the DEIS and FEIS.¹⁸⁸

153. On August 20, 2024, an in-person public hearing was held in Fergus Falls, Minnesota.

154. On August 21, 2024, a remote public hearing (via Webex) was held.

155. On August 22, 2024, an evidentiary hearing was held in St. Paul, Minnesota.

156. During the public comment period ending September 11, 2024, written comments were submitted by a number of individuals and entities.¹⁸⁹ Additionally, comments were submitted by agencies, including MPCA and DNR.¹⁹⁰

¹⁸³ Ex. DOC-19 (News Releases for the DEIS and FEIS; EQB Monitor Notice for FEIS).

¹⁸⁴ Ex. DOC-19 (News Releases for the DEIS and FEIS; EQB Monitor Notice for FEIS).

¹⁸⁵ Ex. Summit-26 (Errata to Page 2 of Surrebuttal Testimony – Scott O’Konek).

¹⁸⁶ CEO Notice of Appearance (Aug. 15, 2024) (eDocket No. [20248-209536-01](#)).

¹⁸⁷ Master Exhibit List (Aug. 19, 2024) (eDocket No. [20248-209632-01](#)).

¹⁸⁸ Ex. DOC-23 (Certificates of Notice and Distribution for the DEIS and FEIS).

¹⁸⁹ See, e.g., Comment by Paul Moss (Aug. 19, 2024) (eDocket No. [20248-209585-01](#)); Comment by Alex Theship-Rosales (Aug. 20, 2024) (eDocket No. [20248-209646-01](#)); Comment by Tiff Ryan (Aug. 22, 2024) (eDocket No. [20248-209711-01](#)); Comment by Dale Lutz (Aug. 22, 2024) (eDocket No. [20248-209710-01](#)); Comment by Tony Bauer (Aug. 23, 2024) (eDocket No. [20248-209732-01](#)); Public Comment Batch (Aug. 26, 2024) (eDocket No. [20248-209756-01](#)); Comment by Molly Stoddard (Aug. 27, 2024) (eDocket No. [20248-209821-01](#)); Comment by Peg Furshong (Aug. 27, 2024) (eDocket No. [20248-209820-01](#)); Comment by Scott Lankow (Aug. 27, 2024) (eDocket No. [20248-209819-01](#)); Comment by Allan Campbell (Aug. 27, 2024) (eDocket No. [20248-209817-01](#)); Comment by the American Petroleum Institute (API) (Aug. 27, 2024) (eDocket No. [20248-209816-01](#)); Comment by John Nauerth III (Aug. 30, 2024) (eDocket No. [20248-209895-01](#)); Public Comment Batch (Sept. 3, 2024) (eDocket No. [20249-209921-01](#)); Public Comment Batch (Sept. 4, 2024) (eDocket No. [20249-209976-01](#)); Comment by Pamela Pontzer (Sept. 4, 2024) (eDocket No. [20249-209956-01](#)); Comment by Barbara Post (Sept. 4, 2024) (eDocket No. [20249-209955-01](#)); Comment by Eric Vegoe (Sept. 4, 2024) (eDocket Nos. [20249-209953-01](#) and [20249-209954-01](#)); Comment by Rex McKee (Sept. 5, 2024) (eDocket No. [20249-209987-01](#)); Comment by Sam Schreiner (Sept. 9, 2024) (eDocket No. [20249-210046-01](#)); Comment by

157. On September 11, 2024, Summit filed comments on the adequacy of the FEIS.¹⁹¹

158. On September 18, 2024, Summit, CURE, EERA and CEO filed initial briefs and proposed Findings of Fact, Conclusions of Law, and Recommendations.

159. On October 4, 2024, Summit, CURE, EERA, CEO, and IUOE filed reply briefs.

160. Also on October 4, 2024, the Department of Commerce filed a Motion to Strike Portions of CURE's Initial Brief (Motion to Strike).

161. On October 16, 2024, CURE filed a Response to the Motion to Strike.¹⁹²

F. Public, Tribal, and Agency Participation

162. In August 2021, prior to filing the Application, Summit reached out to 62 Tribes with current and historic ties to the MCE Project area, including the 11 federally recognized Minnesota Tribes. Initial outreach included Project information and an invitation to participate in field studies. Summit also hosts annual informational webinars to inform the Tribes of MCE Project activities. In December of 2021, each Tribe was invited to conduct Traditional Cultural Property (TCP) studies in the Project area. Summit offered to compensate Tribes for conducting studies that seek to identify possible TCP/historic properties that could be located within the Project corridor. Where Summit has been granted permissions to access a property, the Tribes have been afforded the opportunity to accompany archaeological crews along the entire RA-South route, or to conduct their own studies if permitted by the landowner. In Minnesota,

Paul and Irene Petersen (Sept. 9, 2024) (eDocket No. [20249-210045-01](#)); Comment by Roger Cuthbertson (Sept. 9, 2024) (eDocket No. [20249-210044-01](#)); Comment by Jim Wojcik (Sept. 9, 2024) (eDocket No. [20249-210036-01](#)); Comment by North Central States Regional Council of Carpenters (Sept. 10, 2024) (eDocket No. [20249-210105-01](#)); Public Comment Batch (Sept. 10, 2024) (eDocket Nos. [20249-210099-01](#) and [20249-210101-01](#)); Comment by Boilermakers Local 647 (Sept. 11, 2024) (eDocket No. [20249-210140-01](#)); Comment by Health Professionals for a Healthy Climate (Sept. 11, 2024) (eDocket Nos. [20249-210139-01](#) and [20249-210133-01](#)); Comment by Maggie Schuppert (Sept. 11, 2024) (eDocket No. [20249-210135-01](#)); Public Comment Batch (Sept. 11, 2024) (eDocket Nos. [20249-210118-01](#), [20249-210119-01](#), [20249-210120-01](#), and [20249-210121-01](#)); Comment by Otter Tail Power Company (Sept. 11, 2024) (eDocket No. [20249-210114-01](#)); Comment by Local 49 (Sept. 11, 2024) (eDocket No. [20249-210113-01](#)); Comment by John Jarvis (Sept. 11, 2024) (eDocket No. [20249-210111-01](#)); Comment by Luther Meyer (Sept. 11, 2024) (eDocket No. [20249-210110-01](#)); Comment by Joshua Briese (Sept. 11, 2024) (eDocket No. [20249-210109-01](#)); Comment by Allen Briese (Sept. 11, 2024) (eDocket No. [20249-210107-01](#)); Comment by CURE (Sept. 11, 2024) (eDocket No. [20249-210142-01](#)); Comment by Summit (Sept. 11, 2024) (eDocket No. [20249-210136-01](#)); Public Comment Batch (Sept. 12, 2024) (eDocket Nos. [20249-210164-01](#), [20249-210164-02](#), and [20249-210164-03](#)); Comment by MNIPL (Sept 12, 2024) (eDocket No. [20249-210161-01](#)).

¹⁹⁰ See Comment by MPCA (Sept. 10, 2024) (eDocket No. [20249-210100-01](#)); Comment by DNR (Sept. 11, 2024) (eDocket No. [20249-210134-01](#)).

¹⁹¹ Summit's Comments on the Adequacy of the FEIS (Sept. 11, 2024) (eDocket No. [20249-210136-01](#)) (Summit's Adequacy Comments).

¹⁹² The Motion to Strike is addressed in a separate order, filed contemporaneously with this report.

specifically, the following Tribes have participated in the cultural resource surveys: Rosebud Sioux, Mille Lacs Ojibwe, Sisseton Wahpeton Oyate, and Yankton Sioux. Additionally, as described in testimony, Summit has conducted extensive engagement with Tribes, Tribal Communities, and Native American-Owned businesses in the Minnesota and across the larger MCE Project.¹⁹³

163. Summit also engaged with federal, state, and local agencies regarding the proposed Project prior to filing the Application.¹⁹⁴ Copies of the agency correspondence were provided as Appendix 8 to the Application.

164. Multiple individual and organizational stakeholders offered feedback reflecting a variety of perspectives, suggestions, and opinions with respect to the Project.

Public Input

165. Many public comments, both oral and in-person, raised concerns about potential health and safety impacts in the event of a release.¹⁹⁵

166. Other commenters expressed concerns potential impacts to soil productivity and crop yields due to construction and operation of the pipeline,¹⁹⁶ as well as concerns about potential environmental impacts from the Project.¹⁹⁷

167. Some commenters raised concerns regarding the Project's anticipated water use.¹⁹⁸

168. Additional commenters questioned whether alternative technologies or practices would provide equal or greater CO₂ reduction benefits.¹⁹⁹

¹⁹³ Ex. Summit-13 at 4–5 (Zoller Direct).

¹⁹⁴ Ex. Summit-1 at 140–43 and Appendix 8 (Application).

¹⁹⁵ See, e.g., Comment by Barbara Post (Sept. 4, 2024) (eDocket No. [20249-209955-01](#)); Public Comment Batch (Aug. 26, 2024) (eDocket No. [20248-209756-01](#)).

¹⁹⁶ See, e.g., Ex. DOC-6 (Scoping Public Comments Received by Department); Public Comment by Ginny Allie (May 31, 2023) (eDocket No. [20235-196257-01](#)); August 21, 2024 WebEx Public Hearing Transcript (Aug. 21, 2024 Pub. Hrg. Tr.) at 33.

¹⁹⁷ See, e.g., Ex. DOC-6 at 73-74 (Comment by Doretta Reisenweber), 100 (Comment by Jeffrey Strand); 111 (Comment by Julie Senst), and 120 (Comment by Kim Jeppesen) (Scoping Public Comments Received by Department).

¹⁹⁸ See, e.g., Ex. DOC-6 at 35-36 (Comment by Annette Jewell-Ceder), 72 (Comment by Doretta Reisenweber), 109 (Comment by Julie Erickson); 113 (Comment by Katherine Slama), 115 (Comment by Kathy Hartley) (Scoping Public Comments Received by Department).

¹⁹⁹ See, e.g., Comment by PEER (May 18, 2023) (eDocket Nos. [20235-195970-01](#), [20235-195970-02](#), and [20235-195970-03](#)); Ex. DOC-6 at 89 (Comment by Irene Petersen) (Scoping Public Comments Received by Department); Comment by the Nature Conservancy (Oct. 26, 2022) (eDocket No. [202210-190143-01](#)).

169. Union members and other members of the public stated support for the Project because of the jobs it could create, and the efficient and safe transportation provided by pipelines.²⁰⁰

170. Several commenters indicated support for the Project and described various benefits the Project will provide to the local community, agriculture industry, ethanol industry, the environment, and climate. Supporting comments indicated the environmental benefits of reducing CO₂ emissions, decarbonizing and removing millions of tons of CO₂ annually, helping meet national and local environmental goals, promoting and developing carbon management technologies, and associated health and environmental benefits. Comments also discussed the Project's economic and industry benefits, such as creating new high-paying jobs, generating state and local taxes, contributing to Minnesota's gross domestic product, and supporting local schools, roads, first responders and other infrastructure and community projects. Comments also included support for creating a more sustainable agricultural industry, extending the life of the ethanol industry, ensuring ethanol industry viability, and lowering GHG emissions of ethanol producers.²⁰¹

Tribal Input²⁰²

171. As noted above, Summit engaged with Tribes early in the process to provide information regarding the Project as well as to invite Tribes to participate in cultural resource surveys to identify possible Traditional Cultural Properties/historic properties that could be located within the Project corridor. Four Tribes have participated in cultural resource surveys: Rosebud Sioux, Mille Lacs Ojibwe, Sisseton Wahpeton Oyate, and Yankton Sioux. The Project avoids all resources identified by the Traditional Cultural Specialists.²⁰³

172. Additionally, as described in testimony, Summit has conducted extensive engagement with Tribes, Tribal Communities, and Native American-Owned businesses in the Minnesota and across the larger MCE Project to maximize potential job opportunities related to the Project.²⁰⁴

173. On October 28, 2022, the MLBO filed comments raising concerns regarding potential health and environmental impacts from the Project, the depth of cover of the pipeline and the potential for frost heave. The comments also requested

²⁰⁰ See, e.g., Comment by BendTec, LLC (Mar. 31, 2023) (eDocket No. [20234-194869-01](#)); Ex. DOC-6 at 96 (Comment by Jason Vaughn) and 175 (Comment by Stacey Vaughn) (Scoping Public Comments Received by Department).

²⁰¹ See, e.g., May 3, 2023 Fergus Falls 1:00 p.m. Scoping and Informational Meeting Transcript at 25; Ex. DOC-6 at 24 (Comment by Devin Mogler) and 158-159 (Comment by Mark Bring) (Scoping Public Comments Received by Department).

²⁰² This section addresses input by tribal governments, institutions, and organizations. Participation by individual tribal members, if any, is discussed in the previous section.

²⁰³ Ex. Summit-13 at 4–5 (Zoller Direct).

²⁰⁴ Ex. Summit-13 at 5 (Zoller Direct).

that the Commission engage with the Tribes.²⁰⁵ On November 14, 2022, the MLBO filed additional comments acknowledging the Commission's ongoing consultation, as requested.²⁰⁶

174. On November 29, 2022, the White Earth Band of Minnesota Chippewa Indians filed comments expressing concerns regarding potential impacts to streams, rivers, lakes, wetlands, and other waterbodies from a CO₂ release and carbonic acid, human and environmental health, potential harms to federally protected Treaty Rights, expanding the scope of the EIS to include the entire Minnesota footprint of the MCE Project, and water use, water availability, and water system health.²⁰⁷

175. On October 25, 2023, the Shakopee Mdewakanton Community submitted comments stating that they would defer their comments to the White Earth Nation.²⁰⁸

176. The Leech Lake Band of Ojibwe provided comments requesting that the entire MCE Project footprint in Minnesota be included in the EIS. The comments also requested an analysis of climate and GHG impacts, quantification of CO₂ sequestered, analysis of lifecycle ethanol emissions, an assessment of impacts to wild rice waters, and acknowledgment that Indigenous people rely on Minnesota native plants and medicines and assurances these resources would not be destroyed by the Project. The Tribe also requested the EIS include applicable PHMSA regulations, water use, evidence the Project is a solution to climate change, and inclusion of dispersion modeling.²⁰⁹

177. The Lower Sioux Indian Community provided comments raising concerns regarding the protection of natural and cultural resources within Dakota Homelands. They requested that the entire MCE Project footprint in Minnesota be included in the EIS. The comments also addressed public health and safety questions, emergency management issues, carbon sequestration estimates, and analysis of life-cycle ethanol emissions.²¹⁰

Agency Input

178. On May 18, 2023, MDA filed comments requesting the EIS study safety risks of highly concentrated CO₂ to human and animal health in the event of a pipeline rupture, as well as mitigation measures to minimize potential impacts. MDA also noted

²⁰⁵ Comment by MLBO (Nov. 2, 2022 (eDocket No. [202211-190295-01](#)).

²⁰⁶ Comment by MLBO (Nov. 15, 2022 (eDocket No. [202211-190635-02](#)).

²⁰⁷ Comment by White Earth Nation (Nov. 29, 2022) (eDocket No. [202211-190933-01](#)).

²⁰⁸ Ex. DOC-13, Appendix J at Attachment B (Agency Correspondence) (DEIS).

²⁰⁹ See Ex. DOC-6, Comments by the Leech Lake Band of Ojibwe at 9 (Scoping Public Comments Received by Department).

²¹⁰ Ex. DOC-6, Comments by Lower Sioux Indian Community (Scoping Public Comments Received by Department).

that the treatment of agricultural lands is “well addressed in the required Agricultural Impact Mitigation Plan.”²¹¹

179. On May 18, 2023, the DNR filed comments requesting additional detail in the Project description, further analysis of wildlife impacts, and disclosure of the operating temperature of the pipeline. The DNR suggested specific mitigation measures to be studied in the EIS such as isolated dry trenching crossing methods and ensuring the pipeline is installed deep enough to prevent exposure over time. The DNR also recommended that the Applicant be required to prepare a Vegetation Management Plan (VMP) in consultation with the Vegetation Management Plan Working Group (VMPWG).²¹² On February 23, 2024, the DNR filed comments recommending additional information and corrections to the DEIS that should be incorporated into the FEIS. The DNR also proposed a number of mitigation measures and recommended a number of changes to the Applicant’s Minnesota Environmental Construction Plan (ECP).²¹³

180. On May 18, 2023, MnDOT filed comments requesting that the EIS address all relevant permits or authorizations needed from road authorities. MnDOT also commented on pipeline depth and boring setbacks in relation to MnDOT right-of-way, and placement of markers.²¹⁴

181. On May 18, 2023, the MPCA filed comments requesting that the EIS discuss subsidence along the restored pipeline alignment, winter construction, use of independent environmental monitors, details for the approved disposal locations, methods for disposal of excess subsoil and HDD fluids, and limits to spreading HDD mud.²¹⁵ On February 21, 2024, MPCA filed comments noting its review of the DEIS and scoping EAW, and stating it has no comments.²¹⁶

Local Government Input

182. On February 21, 2024, the City of Lamberton filed comments expressing concerns regarding local emergency medical services personnel, water supply, and local recreational spaces.²¹⁷

II. Routes Evaluated

183. The Applicant and EERA evaluated three route alternatives for the proposed Project. Figure ES-1 from the FEIS (copied below) shows the proposed route alternatives, and each route alternative is described below.

²¹¹ Ex. MDA-1 (MDA Comments).

²¹² Ex. DNR-1 (DNR Comments).

²¹³ Comments by DNR (Feb. 23, 2024) (eDocket No. [20242-203780-01](#)).

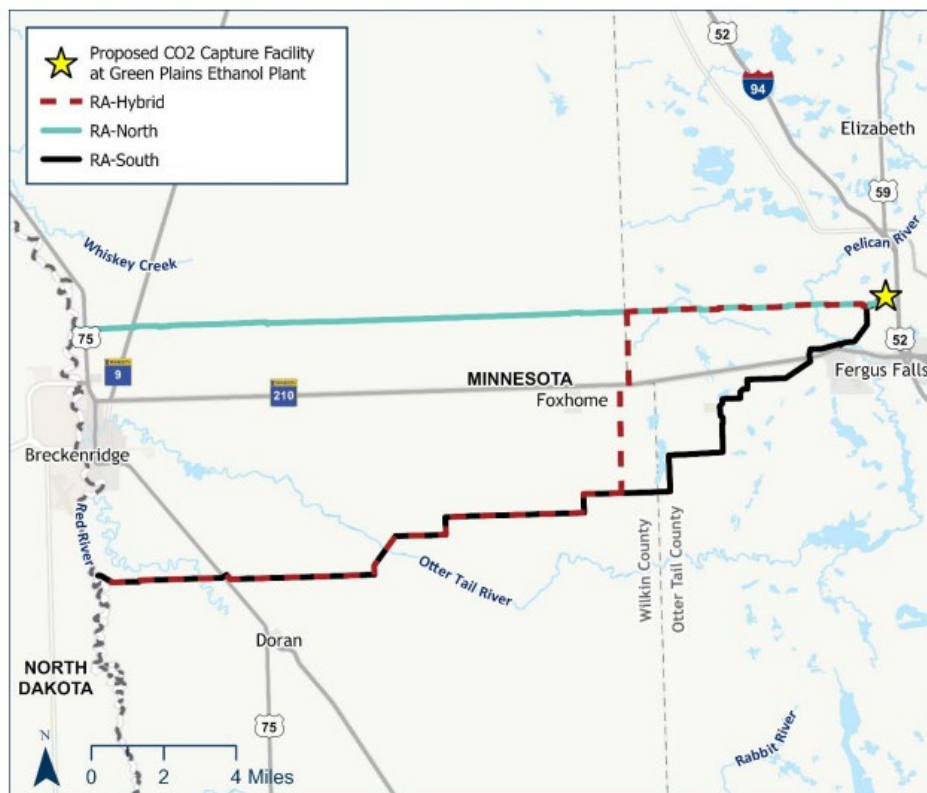
²¹⁴ Ex. MnDOT-1 (MnDOT Comments).

²¹⁵ See Ex. DOC-6, Comments by MPCA (Scoping Public Comments Received by Department).

²¹⁶ Comment by MPCA (Feb. 21, 2024) (eDocket No. [20242-203644-01](#)).

²¹⁷ Comment by City of Lamberton (Feb. 21, 2024) (eDocket No. [20242-203687-01](#)).

Figure ES-1 Proposed Alternatives



A. Applicant’s Preferred Route (Route Alternative – South or RA-South).

184. RA-South is 28.1 miles long and is the Applicant’s Preferred Route. RA-South parallels roadways in a general southwest direction until it meets County Road 58, which it parallels west to the North Dakota border south of Breckenridge.²¹⁸

185. RA-South begins at the ethanol plant, crosses Viking Trail Road, and travels southwest, crossing County Road 210. It continues southwest until turning west on County Road 162, then turns south on County Road 19 and west again midway between County Road 162 and 160. It then continues southwest until turning west at County Road 158 and continuing along County Road 158 to connect to the Applicant’s proposed MCE Project route at the Minnesota-North Dakota border.²¹⁹

B. Route Alternative – North (or RA-North).

186. RA-North is 23.0 miles long. It parallels roadways from the ethanol plant straight west to the North Dakota border just north of Breckenridge.²²⁰

²¹⁸ Ex. DOC-18 at ES-3 (FEIS).

²¹⁹ Ex. DOC-18 at 4-3 (FEIS).

²²⁰ Ex. DOC-18 at ES-3 (FEIS).

187. RA-North starts at the ethanol plant, crosses Viking Trail Road, and travels west along County Road 116 to County Highway 11. Then RA-North follows 240th Street into Wilkin County where it turns into 320th Street before continuing to the Minnesota-North Dakota border. RA-North would not connect to the Applicant's proposed MCE Project route in North Dakota.²²¹

C. Route Alternative – Hybrid (or RA-Hybrid).

188. RA-Hybrid is 29.1 miles long. This route is the same as RA-North between the ethanol plant and 100th Street where it turns south to connect with RA-South before continuing west along the same path as RA-South.²²²

189. RA-Hybrid starts at the ethanol plant, crosses Viking Trail Road, and then travels west along County Road 116 and County Highway 11, continuing onto 240th Street. It then turns south along 100th Avenue until turning west on State Highway 210, then turning south again along 330th Avenue. Continuing south, RA-Hybrid turns west at County Road 162, then south at County Road 19 before turning west again midway between County Roads 162 and 160. It then turns south and travels west along County Road 160 before turning southwest toward County Road 158. It continues west along County Road 158 to connect to the Applicant's proposed MCE Project route at the Minnesota-North Dakota border.²²³

III. Environmental Review

190. Minn. Stat. ch. 216G authorizes the Commission to adopt rules governing the routing of pipelines. Among other things, the rules must provide criteria the Commission will use in determining pipeline routes, which must include the impact of the proposed pipeline on the natural environment.²²⁴ The pipeline-routing rules adopted under this statutory authority are contained in Minn. R. ch. 7852. These rules require the preparation of an environmental document called a CEA.²²⁵

191. Separately, under Minn. Stat. §§ 116D.01–.06., the Minnesota Environmental Policy Act (MEPA), an EIS is prepared when there is potential for significant environmental effects resulting from a major governmental action.²²⁶

192. EIS content requirements are set forth in Minn. R. 4410.2300.

193. When preparing an EIS, the Responsible Governmental Unit (RGU) must use an interdisciplinary approach to integrate assessment data from the natural, environmental and social sciences.²²⁷

²²¹ Ex. DOC-18 at 4-2 (FEIS).

²²² Ex. DOC-18 at ES-3 (FEIS).

²²³ Ex. DOC-18 at 4-2 – 4-3 (FEIS).

²²⁴ Minn. Stat. § 216G.02, subd. 3(b)(4).

²²⁵ Minn. R. 7852.1500.

²²⁶ Minn. Stat. § 116D.04, subd. 2a(a).

194. An EIS is intended to “provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.”²²⁸ An EIS describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of the action could be mitigated.²²⁹ An EIS “must be an analytical rather than an encyclopedic document[.]”²³⁰

195. The EIS must include a: cover sheet; summary; table of contents; list of preparers; project description; governmental approvals; alternatives; environmental, economic, employment, and sociological impacts; and mitigation measures.²³¹

196. If an RGU prepares an appendix to the EIS, the appendix must include, as applicable, material prepared in connection with the EIS as distinct from material incorporated by reference; material which substantiates any material fundamental to the EIS; and permit information that was developed and gathered concurrently with preparation of the EIS.²³²

197. The EIS must include, among other things, a comparison of the potentially significant impacts of the proposal with those of other reasonable alternatives to the proposed project; an evaluation of the potentially significant adverse or beneficial environmental, economic, employment, and sociological impacts for the proposed project and each type of reasonable alternative to the project; and identification of mitigation measures that could reasonably eliminate or minimize any adverse effects of the proposed project. The discussion of impacts must include direct, indirect, and cumulative effects. The EIS must identify and briefly discuss any major differences of opinion concerning significant impacts of the proposed project or the environment.²³³ The EIS must also respond to timely substantive comments on the draft EIS.²³⁴

198. An EIS must address one or more alternatives of each of the following types of alternatives or provide a concise explanation of why no alternative of a particular type is included in the EIS: alternative sites, alternative technologies, modified designs or layouts, modified scale or magnitude, and alternatives incorporating reasonable mitigation measures identified through comments received during the comment periods for EIS scoping or for the draft EIS.²³⁵

²²⁷ Minn. R. 4410.2200.

²²⁸ Minn. R. 4410.2000, subp. 1.

²²⁹ Minn. Stat. § 116D.04, subd. 2a(a).

²³⁰ Minn. Stat. § 116D.04, subd. 2a(a).

²³¹ Minn. R. 4410.2300(A)-(I).

²³² Minn. R. 4410.2300(J).

²³³ Minn. R. 4410.2300 (G), (H), (I).

²³⁴ Minn. R. 4410.2700.

²³⁵ Minn. R. 4410.2300(G).

199. Alternatives included in the scope of the EIS that were considered but eliminated based on information developed through the EIS analysis must be discussed briefly and the reasons for their elimination must be stated. The “no action” alternative must also be addressed. An alternative may be excluded from analysis in the EIS if (i) the alternative does not meet the underlying need for or purpose of the project, (ii) the alternative will likely not have any significant environmental benefit compared to the project as proposed, or (iii) another alternative, of any type, that will be analyzed in the EIS would likely have similar environmental benefits but substantially less adverse economic, employment, or sociological impacts.²³⁶

200. The data and analyses of the EIS must be “commensurate with the importance of the impact and the relevance of the information to a reasoned choice among alternatives and to the consideration of the need for mitigation measures.”²³⁷ Less important material may be summarized, consolidated or simply referenced, provided that the EIS identifies and discusses “any major differences of opinion concerning significant impacts of the proposed project or the environment.”²³⁸ The RGU is entitled to “consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail of information to be prepared for the EIS.”²³⁹

201. The agency's role in the preparation of an EIS is not to serve “as an arbiter between two opposing parties, as a judge is expected to do in the adversary process.” Instead, “it is expected to be a source of independent expertise whose scientific investigation can uncover the data necessary to make an informed environmental decision.”²⁴⁰

202. Mitigation means avoiding impacts altogether by not undertaking a certain project or parts of a project; minimizing impacts by limiting the degree of magnitude of a project; rectifying impacts by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating impacts over time by preservation and maintenance operations during the life of the project; compensating for impacts by replacing or providing substitute resources or environments; or reducing or avoiding impacts by implementation of pollution prevention measures.²⁴¹

203. Cumulative impact means the impact on the environment that results from incremental effects of the project in addition to other past, present, and reasonably foreseeable future projects regardless of what person undertakes the other projects.

²³⁶ Minn. R. 4410.2300(G); Minn. R. 4410.2100.

²³⁷ Minn. R. 4410.2300(H).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 N.W.2d 312, 327 (Minn. 1977).

²⁴¹ Minn. R. 4410.0200, subp. 51.

Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.²⁴²

204. MEPA also provides for an Environmental Assessment Worksheet (EAW), which are brief documents designed to set out the basic facts necessary to determine whether an EIS is required for a proposed action.²⁴³ Where an EIS is prepared, an EAW serves as a scoping document delineating issues and analyses to be contained in the EIS.²⁴⁴

205. Environmental review is conducted by a responsible governmental unit (RGU) such as a county, city or state agency. The requirements for environmental review are based on the nature, size, and location of the proposed project, and are described in Minn. R. ch. 4410. The RGU may request that another governmental unit help with the completion of an EIS.²⁴⁵

206. The EQB has authority under MEPA to establish categories of actions for which an EIS or an EAW must be prepared and actions for which no environmental review is required.²⁴⁶ Additionally, the EQB is authorized to “identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.”²⁴⁷ An EIS may be prepared for a project that is neither exempt from environmental review nor meets a mandatory environmental review category threshold, pursuant to MEPA, when there is potential for significant environmental effects resulting from a major governmental action.²⁴⁸ As outlined in Minn. R. 4410.1700, an RGU can order the preparation of an EIS after completing an EAW if the RGU determines that the proposed project has the potential for significant environmental effects, or if the RGU determines that an EIS will provide information needed to determine the project’s potential for significant environmental effects.²⁴⁹

207. In the Commission’s February 6, 2023 order requiring preparation of an EIS, the Commission stated that the “detailed EIS rules in chapter 4410 offer a reliable, predictable framework that will ensure thorough analysis of the proposal’s potential effects while enhancing accessibility, transparency, and confidence in the process for the public.” The Commission concluded that an EIS under Minn. R. ch. 4410 will facilitate a clear, fully robust analysis of the proposal and possible alternatives, including their potential environmental effects and mitigation measures. Accordingly, the Commission ordered preparation of an EIS for the Project. Additionally, because the

²⁴² Minn. R. 4410.0200, subp. 11.

²⁴³ Minn. Stat. § 116D.04, subd. 1a(c).

²⁴⁴ Minn. R. 4410.2100, subp. 2.

²⁴⁵ Minn. R. 4410.2000, subp. 2.

²⁴⁶ Minn. Stat. § 116D.04, subd. 2a(b).

²⁴⁷ Minn. Stat. § 116D.04, subd. 4a.

²⁴⁸ Minn. Stat. § 116D.04, subd. 2a(a); Minn. R. 4410.1700.

²⁴⁹ Minn. R. 4410.1700. See Minn. Stat. § 116D.04, subd. 1a(c).

EIS process will include the preparation of an EAW for scoping as required by Minn. R. 4410.2100, subp. 2, the Commission denied CURE's petition for an EAW with respect to this Application.²⁵⁰ The Commission also waived its own environmental review and procedural requirements in Minn. R. 7852 to the extent they conflict with Minn. R. ch. 4410.²⁵¹

A. Scoping Requirements and Scoping Decision

208. Prior to preparing an EIS, the RGU conducts a scoping process. The scoping process is intended to “reduce the scope and bulk of an EIS, identify only those potentially significant issues relevant to the proposed project, define the form, level of detail, content, alternatives, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.”²⁵²

209. For all projects requiring an EIS, the RGU must prepare a scoping EAW.²⁵³ A scoping EAW serves as a scoping document delineating issues and analyses to be contained in the EIS.²⁵⁴

210. On April 10, 2023, Commission staff filed a scoping EAW for the Project.²⁵⁵

211. In conjunction with the scoping EAW, the RGU prepares and circulates a DSDD that addresses the contents for a scoping decision. The purpose of the DSDD is to facilitate the delineation of issues and analyses to be contained in the EIS.²⁵⁶ The information in the draft scoping decision is a preliminary draft and “subject to revision based on the entire record of the scoping process.”²⁵⁷

212. On April 11, 2023, EERA filed the initial Draft Scoping Decision Document outlining its proposed scope of environmental review for the proposed Project.²⁵⁸ The initial DSDD incorporated many of the potential impacts and mitigation measures raised by commenters throughout the proceedings.²⁵⁹

²⁵⁰ Ex. PUC-9 at 12 (Order Accepting Application, Requiring Environmental Impact Statement, and Denying Petition; Notice of and Order For Hearing).

²⁵¹ Ex. PUC-9 at 12 (Order Accepting Application, Requiring Environmental Impact Statement, and Denying Petition; Notice of and Order For Hearing).

²⁵² Minn. R. 4410.2100, subp. 1.

²⁵³ Minn. R. 4410.2100, subp. 2.

²⁵⁴ Minn. R. 4410.2100, subp. 2.

²⁵⁵ Ex. PUC-13 (Scoping EAW).

²⁵⁶ Minn. R. 4410.2100, subp. 2.

²⁵⁷ *Id.*

²⁵⁸ Ex. DOC-3 (DSDD).

²⁵⁹ Ex. PUC-20 at 5 (Order Approving Scope of Environmental Review and Denying Stay); Ex. DOC-3 (DSDD).

213. The RGU must hold at least one scoping meeting during the scoping period. The meeting may not be convened earlier than 15 days after publication of the notice of availability of the scoping EAW.²⁶⁰

214. Notice of availability of the scoping EAW and DSDD and of the public scoping meeting(s) must be published. The notice and press release announcing the availability of the scoping EAW and DSDD must include the time, place, and date of the scoping meetings.²⁶¹ Interested persons may provide oral comments at the public meeting and, at any time during the scoping comment period, may file written comments suggesting issues for scoping or commenting on the EAW and DSDD.²⁶² Following the scoping period, the RGU must issue a scoping decision that identifies the issues, alternatives, and potential impact areas to be addressed in the EIS, along with other information identified in Minn. R. 4410.2100, subp. 6.

215. The final scoping decision must be issued within 15 days after the close of a 30-day scoping period.²⁶³

216. An EIS preparation notice must be published within 45 days after the scoping decision is issued.²⁶⁴

217. The scoping decision shall identify “necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.”²⁶⁵

218. On April 18, 2023, Commission staff filed a Notice of Application Acceptance, Public Information and Scoping Meetings, and Availability of Scoping EAW and initial DSDD to eDockets.²⁶⁶ Commission staff sent the notice to those individuals on the project contact list, including state agency technical representatives and affected landowners. The notice was published in the *Wahpeton Daily News* on April 18, 2023, and the *Fergus Falls Daily Journal* on April 19, 2023.²⁶⁷ It was published in the *EQB Monitor* on April 18, 2023, and distributed to the EQB Distribution List in accordance with Minnesota Rule 4410.1500.²⁶⁸ Additionally, the notice was available on the EERA homepage and project webpage.

219. Between May 2–4, 2023, Commission and EERA staff jointly held four public information and EIS scoping meetings as noticed.²⁶⁹ The purposes of these

²⁶⁰ Minn. R. 4410.2100, subp. 3(B).

²⁶¹ Minn. R. 4410.2100.

²⁶² Minn. R. 4410.2100, subp. 5.

²⁶³ Minn. R. 4410.2100, subp. 3(C).

²⁶⁴ Minn. R. 4410.2100, subp. 9.

²⁶⁵ Minn. R. 4410.2100, subp. 6(G).

²⁶⁶ Ex. PUC-16 (Notice of Application Acceptance).

²⁶⁷ Ex. PUC-18 (Affidavits of Publication – Scoping Meeting).

²⁶⁸ Ex. PUC-17 (EQB Monitor Notice of Availability of Scoping EAW and DSDD).

²⁶⁹ These meetings fulfilled the content requirements of Minn. R. 7852.1300(A) and Minn. R. 4410.2100, subp. 3(B).

meetings were to inform the public about the permitting process and the proposed Project, answer questions, and gather input on potential impacts, mitigative measures, and alternatives that should be studied in the EIS.²⁷⁰ Public comments related to EIS scoping were accepted from April 18 to May 18, 2023.²⁷¹

220. EERA filed the Revised DSDD on August 2, 2023, along with comments explaining how the Revised DSDD incorporates issues raised in scoping comments.²⁷²

221. EERA proposed the following Project purpose statement in the Revised DSDD:²⁷³

The purpose of the project is to capture and transport [carbon dioxide] from the Green Plains ethanol plant via pipeline to permanent underground sequestration facilities in North Dakota and to reduce the [CI] score of ethanol produced at the Green Plains ethanol plant and enhance its marketability in low-carbon fuel standard markets.

222. EERA subsequently filed a correction to the Revised DSDD clarifying that the “EIS will consider all *reasonable* mitigation measures suggested through public comment” consistent with Minn. R. 4410.2300(G), which states that the EIS must address “alternatives incorporating reasonable mitigation measures identified through comments” (emphasis added).²⁷⁴

223. On September 26, 2023, the Commission issued its order approving the Revised DSDD as the FSDD for the Project, with modifications. The Commission’s order on the FSDD identified the issues, alternatives, and potential impact areas to be addressed in the EIS, along with other information identified in Minn. R. 4410.2100, subp. 6.²⁷⁵ The Commission concurred with EERA that the purpose statement proposed in the Revised DSDD “accurately reflects the purpose of the proposed project, taking into account the applicant’s stated purpose and the needs and goals of the parties involved according to the record.”²⁷⁶ The Commission also adopted EERA’s recommendation to tailor the geographic scope of the EIS to the area expected to be affected specifically by the Project (the subject of the pending Application).²⁷⁷

224. The Commission identified the following alternatives to be addressed in the EIS: no action, alternative routes, alternative technologies, modified designs or layouts (pipe diameter), modified scale or magnitude (reduced throughput), and

²⁷⁰ Ex. PUC-20 at 1 (Order Approving Scope of Environmental Review and Denying Stay).

²⁷¹ Ex. PUC-20 at 2 (Order Approving Scope of Environmental Review and Denying Stay).

²⁷² See Ex. DOC-7 at Attachment B (Scoping Comments and Recommendations) (Revised DSDD).

²⁷³ Ex. DOC-7, Attachment B at 1 (Scoping Comments and Recommendations) (Revised DSDD).

²⁷⁴ Ex. PUC-20 at 9–10 (Order Approving Scope of Environmental Review and Denying Stay); Ex. DOC-8 (Notice of Error in Revised DSDD).

²⁷⁵ Ex. PUC-20 at 14 (Order Approving Scope of Environmental Review and Denying Stay).

²⁷⁶ Ex. PUC-20 at 11 (Order Approving Scope of Environmental Review and Denying Stay).

²⁷⁷ Ex. PUC-20 at 10–12 (Order Approving Scope of Environmental Review and Denying Stay).

alternatives incorporating reasonable mitigation measures.²⁷⁸ In addition, the Commission requested that EERA staff coordinate with the Minnesota Office of Pipeline Safety (MNOPS), Tribal governments, and state agencies to ensure that their expertise is reflected in the EIS and that the environmental review process benefits from their expertise. The Commission also requested that EERA follow the federal PHMSA rulemaking proceedings related to carbon-dioxide pipelines and include in the EIS a discussion of mitigation strategies and measures to ensure public safety.²⁷⁹

225. EERA published the EIS preparation notice, in the *EQB Monitor* on September 26, 2023, as required by Minn. R. 4410.2100, subp. 9.²⁸⁰

226. On October 5, 2023, EERA issued the Final Scoping Decision Document for the EIS to be prepared for the Project.²⁸¹ The FSDD included: (1) issues to be addressed in the EIS; (2) time limits for preparation of the EIS, if they would be shorter than those allowed by Minn. R. 4410.0200 – 4410.6500 (none); (3) a list of the permits for which information would be gathered concurrently during EIS preparation (none); (4) permits for which a record of decision would be required (none); (5) alternatives that would be addressed in the EIS; (6) potential impact areas resulting from the Project itself and from related actions to be addressed in the EIS; and (7) identification of studies to be completed for the EIS, including those requiring compilation of existing information or development of new data.²⁸²

B. Draft Environmental Impact Statement Requirements

227. A DEIS must be prepared consistent with Minn. R. 4410.0200 to 4410.6500 and in accordance with the FSDD. The RGU must make the DEIS available for public review and comment and must hold an informational meeting in the county where the project is proposed.²⁸³

228. RGUs are responsible for verifying the accuracy of environmental documents that are relied upon by the RGU.²⁸⁴

229. When the draft EIS is completed, the RGU must make it available for public review and comment. It likewise must hold an informational meeting in each of the counties where “the project is proposed.”²⁸⁵ A typewritten or audio-recorded transcript of the informational meeting must be made.²⁸⁶ A copy of the draft EIS must be

²⁷⁸ Ex. PUC-20 at 14 (Order Approving Scope of Environmental Review and Denying Stay).

²⁷⁹ Ex. PUC-20 at 13–14 (Order Approving Scope of Environmental Review and Denying Stay).

²⁸⁰ Ex. DOC-9 (Notice of EIS Preparation).

²⁸¹ Ex. DOC-10 (FSDD).

²⁸² Minn. R. 4410.2100, subp. 6; Ex. DOC-10 (FSDD).

²⁸³ Minn. R. 4410.2600, subp. 2.

²⁸⁴ Minn. R. 4410.0400, subp. 2.

²⁸⁵ Minn. R. 4410.0400, subp. 2.

²⁸⁶ Minn. R. 4410.2600, subp. 8.

furnished to certain public agencies, listed in Minn. R. 4100.2600, subp. 3, and particular members of the public.²⁸⁷

230. The Environmental Quality Board is one of the agencies that must receive a copy of the draft EIS. Receipt of the draft EIS by EQB staff operates as notification that they should publish a Notice of Availability about the draft EIS in the *EQB Monitor*.²⁸⁸

231. The RGU must supply a press release to at least one newspaper of general circulation within the area where the project is proposed, noting the availability of the draft EIS.²⁸⁹

232. The notice of availability for the *EQB Monitor* and the press release must contain “notice of the date, time, and place of the informational meeting, notice of the location of the copy of the draft EIS available for public review, and notice of the date of termination of the comment period.”²⁹⁰ The record must remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the draft EIS may be submitted any time during the comment period.²⁹¹

C. Draft Environmental Impact Statement Preparation and Issuance

233. Between October 2023 and January 2024, the Department worked to prepare a draft EIS. As part of these preparations, the Department sent draft sections to tribal stakeholders and technical agency partners for their expertise and input.²⁹²

234. On January 23, 2024, EERA issued the DEIS and its Notice of Availability of DEIS and Public Information Meetings.²⁹³ The DEIS incorporated the following components, as required by Minn. R. ch. 4410: cover sheet; summary; table of contents; list of preparers; project description; list of governmental approvals; discussion of alternatives, including a discussion of why particular alternatives were considered but eliminated; potentially significant environmental and economic impacts identified in scoping; mitigation measures; and appendices containing analysis fundamental to the EIS.²⁹⁴ The notice included the dates, times, and locations of the public meetings; notices of where the draft EIS was available for public review; and indicated that the comment period would close on February 23, 2024.²⁹⁵

²⁸⁷ Minn. R. 4410.2600, subp. 3(A)-(H).

²⁸⁸ Minn. R. 4410.2600, subp. 5.

²⁸⁹ Minn. R. 4410.2600, subp. 6.

²⁹⁰ Minn. R. 4410.2600, subp. 7.

²⁹¹ Minn. R. 4410.2600, subp. 9.

²⁹² Ex. DOC-13, App. J at 1-5 (Draft Environmental Impact Statement).

²⁹³ Exs. DOC-13 (DEIS), DOC-12 (Notice of DEIS Public Information Meetings), and DOC-14 (Notice of Availability of DEIS and Public Information Meetings).

²⁹⁴ Ex. DOC-13 (Draft Environmental Impact Statement).

²⁹⁵ Ex. DOC-20 (EQB Monitor Notice for Draft Environmental Impact Statement).

235. On January 25, 2024, the Department provided copies of the draft EIS to public libraries.²⁹⁶ The Department also provided copies of or notice of the draft EIS summary to commenters.²⁹⁷ On January 26, 2024, the Department issued a press release providing notice of the availability of the draft EIS to newspapers of general circulation in the areas that would be affected by the project.²⁹⁸

236. After the Department released the draft EIS, the Department again solicited input from the public by holding comment meetings in Breckenridge, Fergus Falls, and through a virtual meeting.²⁹⁹ The Department also invited the public to submit written comments.³⁰⁰ In total, the Department received more than 1,500 unique comments with recommendations about how to change or improve the draft EIS.³⁰¹

237. The FSDD specified alternatives to the proposed Project developed during scoping that were to be considered in the EIS; each alternative was considered in the DEIS.³⁰² Thus, in accordance with Minn. R. 4410.2300(G), the DEIS compared the potentially significant impacts of the Project with those of the other alternatives specified in the FSDD.

238. The FSDD specified potentially significant issues and impacts developed during scoping for further analysis in the EIS; each issue and/or impact was considered in the DEIS.³⁰³ Thus, in accordance with Minn. R. 4410.2300(G), the DEIS addressed the potentially significant adverse or beneficial environmental, economic, employment, and sociological impacts generated by the Project and alternatives, including direct, indirect, or cumulative impacts commensurate with their importance as identified by the scoping process.

D. Final Environmental Impact Statement Requirements

239. The RGU must respond to the timely substantive comments received as to the draft EIS when preparing the final EIS.³⁰⁴

240. If more than minor changes are required, the draft EIS must be “rewritten so that necessary changes in the text are incorporated in the appropriate places.”³⁰⁵

²⁹⁶ Ex. DOC-22 (Mailings to Libraries of the Draft and Final Environmental Impact Statements).

²⁹⁷ Ex. DOC-23 (Certificates of Notice and Distribution for the Draft and Final Environmental Impact Statements).

²⁹⁸ Ex. DOC-19 (News Releases for Draft and Final Environmental Impact Statements); Ex. DOC- 21 (Newspaper Publication of Draft Environmental Impact Statement Notice).

²⁹⁹ Ex. DOC-14 at 1-2 (Notice of Availability of Draft Environmental Impact Statement and Public Information Meetings).

³⁰⁰ Ex. DOC-14 at 2-3 (Notice of Availability of Draft Environmental Impact Statement and Public Information Meetings).

³⁰¹ Hrg. Tr. at 151:15-17 (Levi).

³⁰² See Exs. DOC-10 (FSDD) and DOC-13 (DEIS).

³⁰³ See Exs. DOC-10 (FSDD) and DOC-13 (DEIS).

³⁰⁴ Minn. R. 4410.2600, subp. 10; Minn. R. 4410.2700, subp. 1.

³⁰⁵ Minn. R. 4410.2700, subp. 2.

241. The RGU must provide copies of the final EIS to all persons receiving copies of the entire draft EIS. Copies are provided to any person who submitted substantive comments on the draft EIS and, to the extent possible, to any person requesting the final EIS.³⁰⁶

242. The RGU must provide EQB staff with a copy of the final EIS, and this constitutes notice to the EQB to publish notice of availability of the final EIS in the EQB Monitor.³⁰⁷

243. The notice of availability in the EQB Monitor and the press release must contain notice of the location of the copy of the final EIS available for public review and notice of the opportunity for public comment on the adequacy of the final EIS.³⁰⁸

244. Interested persons are entitled to submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, for a period of not less than ten days following the publication in the EQB Monitor of the notice of availability of the final EIS. The notice of availability of the final EIS must indicate when the comment period expires.³⁰⁹

E. Final Environmental Impact Statement Preparation and Issuance

245. Between February 2024 and July 2024, the Department worked to prepare a final EIS based on public feedback received during the draft EIS comment period. On July 31, 2024, the Department issued a final EIS that addressed each of the component parts required by Minn. R. ch. 4410, including potentially significant issues identified during the scoping process.³¹⁰

246. On August 1, 2024, the Commission issued a notice of public and evidentiary hearings and final environmental impact statement availability.³¹¹ On August 3, 2024, Notice of Public and Evidentiary Hearing and final EIS Availability was published in the *Fergus Falls Daily Journal* and the *Wahpeton Daily News*.³¹² On August 13, 2024, the Department issued a press release regarding the availability of the final EIS to newspapers of general circulation in the areas that would be affected by the project.³¹³ On the same day, a notice of availability of the final EIS was published in the EQB Monitor.³¹⁴

³⁰⁶ Minn. R. 4410.2700, subp. 3.

³⁰⁷ Minn. R. 4410.2700, subp. 4.

³⁰⁸ Minn. R. 4410.2700, subp. 6.

³⁰⁹ Minn. R. 4410.2800, subp. 2.

³¹⁰ Ex. DOC-18 (Final Environmental Impact Statement).

³¹¹ Ex. PUC-26 (Notice of Public and Evidentiary Hearings and Final Environmental Impact Statement Availability).

³¹² Ex. PUC-27 (Affidavits of Publication).

³¹³ Ex. DOC-19 (News Releases for Draft and Final Environmental Impact Statements).

³¹⁴ Ex. DOC-19 (EQB Monitor Notice for Final Environmental Impact Statement).

F. Environmental Impact Statement Adequacy Determination Requirements

247. To determine whether a particular final EIS is adequate, the RGU applies the criteria found in Minn. R. 4410.2800, subp. 4:

The final EIS shall be determined adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.

248. The determination of adequacy of the final EIS must be made within 280 days after the preparation notice was published in the EQB Monitor unless the time is extended by consent of the project proposer and the RGU, or by the governor for good cause.³¹⁵

249. The RGU must notify all persons receiving copies of the final EIS pursuant to Minn. R. 4410.2700, subp. 3 of its adequacy decision. This notice must occur within five days of an adequacy determination. Public notice of the decision must be published in the EQB Monitor.³¹⁶

G. Parties' Adequacy Arguments

250. In response to the discussions of the various route alternative impacts contained in the EIS, CURE asserts that the EIS has deficiencies that render the document inadequate.³¹⁷

251. CURE asserts that the EIS is inadequate in the following respects:

- a. cultural surveys have not been completed for the entire length of any of the three route alternatives;
- b. Green Plains' total annual GHG emissions are not known and the potential use of the MCE CO₂ for EOR has not been fully analyzed;

³¹⁵ Minn. R. 4410.2800, subp. 3.

³¹⁶ Minn. R. 4410.2800, subp. 6.

³¹⁷ These concerns are also alleged by public commenters.

- c. no Geohazard Assessment has been completed for any of the route alternatives;
- d. geotechnical evaluations for HDD crossings have not been completed for RA-North or RA-Hybrid, and for only some of the proposed crossings along RA-South;
- e. site- and resource-specific impacts of a leak or rupture are not known. Discussions about potential impacts are general and do not address any of the specific resources or locations—such as the Orwell 9 Unit, the Otter Tail River, or wetlands—are not considered.
- f. the total amount of water to be used for construction of the capture facility and pipeline is not known.
- g. the source of the water to be used for construction of the capture facility and pipeline has not been determined. The source of water to be used for capture facility operations may be an existing commercial well at the Green Plains, but plans have not been finalized;
- h. groundwater investigations to determine the location of shallow aquifers have not been conducted along the entire length of any of the route alternatives. Whether sheet piling or regular trenching activities would intersect or breach these aquifers is unknown; and,
- i. the study identifying the potential impact radius of a leak or rupture does not provide sufficient information and cannot be relied upon.

252. Additionally CURE asserts that the EIS contains inaccurate information, as follows:

- a. the FEIS assumes that the project will be able to capture 100% of CO₂ emissions from the Green Plains' CO₂ scrubber stack;
- b. the FEIS assumes that the project will only sequester captured CO₂ in dedicated geologic storage in saline aquifers;
- c. the FEIS relies on outdated and biased studies to conclude that the pipeline will not have negative impacts on property values;
- d. the FEIS inaccurately characterizes soils found along the route alternatives as "similar" to each other;
- e. the FEIS inaccurately describes the impacts to wetlands as being "similar" across all route alternatives; and,

f. the FEIS makes several unsupported statements about the buffering ability of soils in the vicinity of the project.

253. Summit, the Department, and IUOE argue that the EIS is adequate.

H. EIS Adequacy Analysis

254. The Commission is charged with determining the adequacy of the FEIS for the Project.

255. An adequate EIS is an “analytical rather than an encyclopedic document.”³¹⁸ It describes the proposed project and reasonable alternatives and their impacts, and reasonable mitigation measures.³¹⁹ It also must provide responses to substantive comments received regarding the draft EIS and be prepared in compliance with all procedural requirements.³²⁰

256. The appropriate level of detail for an EIS “necessarily calls for judgment, and that judgment is the agency’s.”³²¹

257. In the course of preparing the EIS, the budget for its preparation increased from \$150,000 to \$2,000,000—an increase of 1,333 % over approximately 17 months. “Professional/technical services” constituted a substantial component of EERA’s estimated total expenditures.³²²

258. The budget revisions demonstrate a good-faith effort to adjust, in light of the Project’s scope and “unique nature,”³²³ so as to capture an appropriate level of detail for a thorough EIS.

259. Ultimately, the Commission determines whether EERA struck the correct balance between the cost of data and analyses and the relevance and importance of the information.

260. The public has been afforded opportunities for input to the scope of the EIS and the content of the DEIS and FEIS, as well as the adequacy of the FEIS in accordance with all applicable provisions of MEPA and Minn. R. Ch. 4410.

261. The final EIS addressed and considered the following alternatives identified by the Commission identified to be addressed in the EIS: no action, alternative routes, alternative technologies, modified designs or layouts (pipe diameter), modified

³¹⁸ Minn. Stat. § 116D.04, subd. 2a(a).

³¹⁹ Minn. R. 4110.2800, subp. 4.

³²⁰ Minn. R. 4110.2800, subp. 4.

³²¹ *No Power Line, Inc.*, 262 N.W.2d at 327; see Minn. R. 4410.2300(H) (requiring a “thorough but succinct discussion” and that data and analyses be commensurate with importance, relevance, and the relationship between those and the cost of the data).

³²² EERA Letter (June 6, 20224) (eDocket No. [20246-207453-01](#)).

³²³ EERA Letter (March 4, 2024) (eDocket No. [20243-204058-01](#)).

scale or magnitude (reduced throughput), and alternatives incorporating reasonable mitigation measures.

262. Under the no-action alternative, the Commission would not issue a pipeline routing permit and the Project would not be constructed.³²⁴

a. Alternative Technologies

263. The FEIS considered the following alternative technologies, in accordance with Minn. R. 4410.2300(G) and the FSDD: (1) alternative agricultural practices and (2) a suite of energy use and efficiency changes.

264. The final EIS addressed both technologies because they could reduce carbon-intensity scores of Green Plains-produced ethanol.³²⁵ In addressing these alternatives, the final EIS evaluated about 15 types of potential impacts that could arise from the use of alternative technologies to meet the project's purpose.³²⁶

b. Alternative Routes

265. The final EIS adequately addressed three different route alternatives—RA-North, RA-South, and RA-Hybrid—that could meet the project's purpose. The Department studied RA-South because it is the Applicant's proposal.³²⁷ The Department agreed to study RA-North and RA-Hybrid because they were reasonable alternatives proposed by CURE.³²⁸ In the course of studying each route alternative, the Department evaluated approximately 30 types of potential direct, indirect, and cumulative impacts that could arise from the various pipeline route alternatives, ranging from cultural resource impacts to wildlife impacts.³²⁹

266. Overall, the FEIS identified similar potential human and environmental impacts across the three route alternatives.³³⁰

c. Modified Designs, Layouts, Scales, and Magnitudes

267. The final EIS adequately addresses modified designs or layouts. Specifically, the final EIS considered the impacts of a 6-inch diameter and 3-inch diameter pipe.³³¹ It also adequately considered modified scales and magnitudes.³³²

³²⁴ Ex. DOC-18 at 4-1 and 7-1 – 7-14 (FEIS).

³²⁵ Ex. DOC-10 at 2-3 (Final Scoping Decision).

³²⁶ Ex. DOC-18 at 6-1:6-44 (Final Environmental Impact Statement).

³²⁷ Ex. DOC-10 at 2-3 (Final Scoping Decision).

³²⁸ Ex. DOC-10 at 2 (Final Scoping Decision).

³²⁹ Ex. DOC-18 at 5-1:5-178 (Final Environmental Impact Statement).

³³⁰ See Ex. DOC-18 at ES-4 to ES-13 (FEIS) (summarizing the impact for each routing factor for each route alternative).

³³¹ Ex. DOC-18 at 4-3:4-4 (Final Environmental Impact Statement).

³³² Ex. DOC-18 at 4-5 (Final Environmental Impact Statement).

268. The final EIS adequately addressed the proposed project and alternatives that could meet the project's purpose.³³³ For each alternative and the proposed project, the final EIS adequately addressed potential impacts in a "thorough but succinct" manner.³³⁴

d. Possible Mitigations

269. The final EIS adequately identifies possible mitigations that could alleviate the effects of the identified impacts associated with the proposed project and each alternative. Specifically, the final EIS addressed mitigations to address noise, public health and safety, archaeological resource impacts, geological and topographical impacts, soil impacts, water resource impacts, and wetland impacts.³³⁵ These proposed mitigations were developed based on feedback from other agencies such as the Minnesota Department of Health and public commenters.³³⁶ Other recommendations were independently developed by the Department.³³⁷ The final EIS also analyzed various mitigation plans proposed by the Applicant.³³⁸

e. Response to Comments

270. The final EIS responds to the timely substantive comments on the DEIS consistent with the scoping decision.³³⁹ EERA prepared the FEIS in response to comments on the DEIS.³⁴⁰

271. The final EIS includes numerous changes and revisions in response to substantive comments to the DEIS. For example, the final EIS includes:

³³³ Minn. R. 4110.2800, subp. 4.

³³⁴ Minn. R. 4110.2800, subp. 4.

³³⁵ Ex. DOC-18 at 11-14:11-16 (Final Environmental Impact Statement).

³³⁶ Ex. DOC-18 at 11-14:11-16 (Final Environmental Impact Statement).

³³⁷ Ex. DOC-18 at 11-14:11-16 (Final Environmental Impact Statement).

³³⁸ Ex. DOC-18 at Apps. D-F, L, M; Ex. DOC-18 at 2-15-16 (Final Environmental Impact Statement).

³³⁹ Minn. R. 4410.2700, subp. 1.

³⁴⁰ See Ex. DOC-18, Appendix O (Comments on the Draft EIS and Responses) (FEIS).

Additional information related to the MCE Project (Chapter 2).

Additional discussion of decommissioning (Chapter 2).

Additional discussion of scoping proceedings (Chapter 3).

Additional discussion of Commission's authority and obligations, related to pipeline safety standards (Chapter 3).

Additional discussion of alternatives incorporating reasonable mitigation measures (Chapter 4).

Additional discussion of environmental setting and potential impacts (Chapter 5).

Additional discussion of visual impacts during construction (Chapter 5).

Additional discussion of cultural resource surveys (Chapter 5).

Additional discussion of potential impacts to environmental justice populations in the event of a release of CO₂ (Chapter 5).

Update to Tables 5-3 (Land Cover) and 5-4 (Land Cover and Land Use Impacts by Route Alternative).

Additional discussion of potential noise impacts (Chapter 5).

Additional discussion of potential impacts on the human environment (Chapter 5).

Additional discussion of potential impacts on property values (Chapter 5).

Additional discussion of potential impacts to public health and safety and public services and infrastructure (Chapter 5).

Additional discussion of potential recreation impacts (Chapter 5).

Additional discussion of potential impacts of the Project on tax revenue (Chapter 5).

Additional discussion of potential impacts to agricultural land (Chapter 5).

Additional discussion of potential impacts to industrial resources and tourism (Chapter 5).

Additional discussion of potential impacts and mitigation recommendations concerning archeological and cultural resources (Chapter 5).

Additional discussion of the Project's net benefits to GHG emissions (Chapter 5).

Update to Table 5-49 (GHG Emissions Summary).

Update to Table 5-40 (Project's Proposed Activities and Interactions with Climate Trends).

Additional discussion of EOR (Chapter 5).

Additional discussion of geologic hazards and soil impacts (Chapter 5).

Additional discussion of potential impacts on rare and unique resources (Chapter 5).

Additional discussion of potential impacts to vegetation, water resources, and wetlands (Chapter 5).

Additional discussion of the U.S. Environmental Protection Agency renewable fuel standard program (Chapter 6).

Additional discussion of Project CI score (Chapter 6).

Additional discussion of beneficial alternative agricultural practices (Chapter 6).

Update to Table 6-15 (Alternative Technologies CI Score Impact Summary).

Additional discussion of environmental impacts of no action alternative (Chapter 7).

Additional discussion of potential impacts and mitigation recommendations concerning an accidental release of CO₂ (Chapter 8).

Inclusion of Fargo-Moorhead Area Diversion Project as recommended by DNR (Chapter 10).

Additional discussion of potential impacts of route alternatives (Chapter 11).

Update to list of preparers (Chapter 12).

The final EIS renamed Appendix G (Summary of PHMSA Regulations and Accidental Release Dispersion Reports) and Appendix J (Tribal Government and State Agency Correspondence). The final EIS also includes a new Appendix O (Comments on the DEIS and Responses).³⁴¹

272. As part of the final EIS, EERA prepared written responses to substantive comments on the DEIS consistent with the FSDD, as required by Minn. R. 4410.2700, subp. 1.³⁴² Specifically, when preparing the final EIS, EERA reviewed all public comments submitted during the DEIS public comment period, which concluded on February 23, 2024.³⁴³ Appendix O includes all of the public comments (both oral and written) received during this period.³⁴⁴ EERA provided responses to all substantive comments in Appendix O.³⁴⁵

273. The final EIS adequately responds to substantive comments received regarding the draft EIS.³⁴⁶ The final EIS responded to approximately 1,500 comments. The Department established compliance with this requirement by creating a table that identifies each unique comment, the agency's response, and where any changes to the EIS were made.³⁴⁷ In response to draft EIS comments, the Department made hundreds of revisions including to major topics such as enhanced oil recovery, carbon capture rates, and long-term impacts from soil disturbances.³⁴⁸

f. Contested Adequacy Issues

Cultural Surveys

274. Section 5.4.2 of the final EIS addresses cultural resources.³⁴⁹

275. The EIS notes bodies of water, plants, and wildlife of Tribal significance in the Project area, as well as the cultural significance of local agriculture and outdoor recreation.³⁵⁰

276. Summit has surveyed 99.8% of RA-South, and the construction of the Project will not impact any cultural resources listed or eligible for listing under the NHPA or Tribal areas of interest. Summit will complete archeological surveys regardless of the route selected and committed to avoiding impacts to any identified eligible cultural

³⁴¹ See Ex. DOC-18 at viii (FEIS).

³⁴² See Ex. DOC-18, Appendix O at 1 (FEIS).

³⁴³ See Ex. DOC-18, Appendix O at 1 (FEIS).

³⁴⁴ See Ex. DOC-18, Appendix O at 1 (FEIS).

³⁴⁵ See Ex. DOC-18, Appendix O at 1 (FEIS).

³⁴⁶ Minn. R. 4410.2800, subp. 4(B).

³⁴⁷ Ex. DOC-18, App. O (Final Environmental Impact Statement).

³⁴⁸ See, e.g., Ex. DOC-18 at 5-47, 5-105:5-108, 6-7, 9-1 (Final Environmental Impact Statement).

³⁴⁹ Ex. DOC-18 at 5-11–15 (FEIS).

³⁵⁰ Ex. DOC-18 at 5-11–13 (FEIS).

resources and Tribal areas of interest through route modifications or construction methodology.³⁵¹

Property Values

277. Section 5.4.7 addresses and analyzes the potential impact of the Project on property values.³⁵²

278. CURE contends that the EIS relies on outdated and biased studies to conclude that the pipeline will not have negative impacts on property values.

279. The EIS notes that “no studies related to the impacts of CO₂ pipelines on property values have been identified,” so the EIS analysis included studies that assess the effects of natural gas pipelines and compressor stations on property values.³⁵³ The EIS summarizes the literature that focuses on the relationship of property values to the presence of a pipeline facility. The EIS analysis included a review of five studies.³⁵⁴

280. The EIS concludes that:³⁵⁵

These studies do not indicate a conclusive, quantitative relationship between property values and proximity to natural gas pipelines. Therefore, it would not be feasible to quantify the potential for impacts of the project on property values, both in general or specifically to any parcels or areas. It is reasonable to expect that property values may be impacted differently based on the setting and characteristics of each property. However, there is no conclusive evidence indicating that the project would have a significant negative impact on property values. Overall, impacts on property values are anticipated to be minimal and lessen with distance from the pipeline. However, impacts on specific properties could vary widely.

281. CURE’s witness Silvia Secchi acknowledged that there is an element of the unknown with respect to how property values might be impacted by the project—“it could be significant, it could be insignificant[.]”³⁵⁶ This testimony is consistent with the EIS’s analytical conclusion.

282. Studies identified by Secchi do not meaningfully contradict the EIS’s conclusion that there is not a conclusive, quantitative relationship between property values and CO₂ pipeline proximity.³⁵⁷ Lower property values in proximity to a pipeline

³⁵¹ Ex. Summit-13 at 10 (Direct Test. of Jason Zoller). The EIS reflects survey completion of 89% for RA-South, 60% for RA-Hybrid and 1% of RA-North.

³⁵² Ex. DOC-18 at 5-39–44 (FEIS).

³⁵³ Ex. DOC-18 at 5-41 (FEIS).

³⁵⁴ Ex. DOC-18 at 5-42, table 5-11 (FEIS).

³⁵⁵ Ex. DOC-18 at 5-42.

³⁵⁶ Evid. Hrg. Tr. at 140:6–144:9 (Secchi).

³⁵⁷ Evid. Hrg. Tr. at 140:6–144:9 (Secchi).

may not be a consequence of the pipeline, but “persistent disamenities associated with the site itself and/or the surrounding neighborhood.”³⁵⁸

283. It is possible to draw different reasonable conclusions from the studies that support the EIS property-value analysis. The EIS reasonably concluded that impacts on property values are anticipated to be minimal, lessen with distance from the pipeline, and impacts on specific properties could vary widely.

284. The EIS also notes that:³⁵⁹

a landowner’s assessment of potential impacts on their property’s value is often a deeply personal comparison of the property “before” and “after” a proposed project is constructed. However, these judgments do not necessarily influence the market value of a property. [. . .] this section does not and cannot consider or address the fear and anxiety felt by landowners when facing the potential for negative impacts on their property’s value.

285. The EIS reasonably addresses and analyzes available information relating to property values, to a degree sufficient for governmental units, the proposer of the project, and other persons to evaluate the proposed project.

Emissions Accounting

286. Section 5.7 and chapter 6 of the final EIS address construction, operations, life-cycle greenhouse gas impacts of the Project and the ethanol plant, and the potential of the transported CO₂ to be used for enhanced oil recovery.

287. Regarding Green Plains’ total annual GHG emissions, the final EIS addresses the emissions associated with the ethanol fermentation process, which is intended to be captured, as well as emissions from on-site combustion, and the sources of electricity consumed on-site.³⁶⁰

288. CURE contends, inaccurately, that the EIS presumes the Project will, in practice, capture 100% of CO₂ emissions from the scrubber stack.

289. The EIS analyzed scenarios where the Project captures 100%, 70%, 40%, or 10% of CO₂ released by ethanol fermentation. Excluding CO₂ emissions that may occur from leaks at mainline valves, sequestration of captured CO₂ is projected to result in net CO₂ fermentation emission reductions in all but the 10% capture scenario.³⁶¹

³⁵⁸ Ex. DOC-24 at 11 (“The Property Value Impacts of Industrial Chemical Accidents”).

³⁵⁹ Ex. DOC-18 at 5-43.

³⁶⁰ Ex. DOC-18 at 5-98–99 and 6-19–22 (FEIS).

³⁶¹ Ex. DOC-18 at 5-99, table 5-39 (FEIS).

290. The final EIS addresses the potential use of the captured CO₂ for enhanced oil recovery.³⁶²

291. Summit has a contract with the ethanol plant to capture and permanently sequester the CO₂ from the scrubber stack at the plant.³⁶³ The ethanol plant stated that a reduced CI score is critical to its future business plans.³⁶⁴ Summit witness James Powell testified that the ethanol plant has no plans to use the CO₂ for EOR, and to do so would lessen the Project's impact on reducing the CI score of the ethanol produced at the ethanol plant.³⁶⁵

292. The project's sequestration facilities are located in Oliver and Morton Counties, North Dakota, which do not have oil or gas fields. For the CO₂ to be used in EOR, another pipeline would need to be constructed to transport the CO₂ to an oil or gas field where it is needed. Alternatively, a pipeline would need to be constructed to Beulah, North Dakota, (also in Oliver County) where a CO₂ pipeline operated by Souris Valley Pipeline, Ltd., exists. This pipeline transports CO₂ captured at a synthetic natural gas plant to oil fields in Canada. The terminus of the proposed MCE project is about 16 miles from Beulah.³⁶⁶

293. No additional facilities are connected to this Project, nor is there capacity on the proposed pipeline to transport CO₂ beyond the amount intended to be captured by the Project.³⁶⁷

294. A preponderance of the evidence does not support a conclusion that the pipeline will likely, during its lifetime, transport CO₂ for enhanced oil recovery. While it is theoretically possible, the stated intent to sequester all CO₂ transported from the Green Plains ethanol plant and the pipeline-capacity limitation are supported by substantial evidence and render the concern speculative.

295. CURE witness Grubert challenged the adequacy of the life-cycle greenhouse gas emissions analysis contained in the EIS. Under questioning, Grubert admitted that she was not "personally familiar" with the final EIS and, therefore, could not say whether her concerns with the draft EIS had been addressed. Given that Grubert was not familiar with the final EIS, her testimony challenging EIS adequacy is unreliable and due no weight.

296. In fact, the final EIS addresses comments by CURE, the Lower Sioux Indian Community, and other members of the public concerning the life-cycle emissions analysis and EERA revised the EIS in response to the comments.³⁶⁸

³⁶² Ex. DOC-18 at 5-105–108 (FEIS).

³⁶³ Ex. Summit-1 at 1 (Application) and Ex. Summit-23 at 3 (Piggott Rebuttal).

³⁶⁴ See August 20, 2024 Fergus Falls Public Hearing Transcript (Aug. 20, 2024 Pub. Hrg. Tr.) at 59:17–61:24 (Petersen).

³⁶⁵ Ex. Summit-18 at 1 (Powell Rebuttal).

³⁶⁶ Ex. DOC-18 at 5-106 (FEIS).

³⁶⁷ Evid. Hrg. Tr. at 97:15–24 (Powell).

Geohazards and Horizontal Directional Drilling

297. The final EIS addresses potential geohazards to the pipeline, including frost heave, landslides, flooding, earthquakes, karsts, and shrink swell soils.³⁶⁹ EERA recommends that Summit provide the Commission results of the Phase I Geohazard Assessment, and any subsequent Phase II and Phase III assessments as a pre-construction filing.³⁷⁰

298. HDD crossings are proposed to mitigate impacts on large rivers and adjacent riparian areas.³⁷¹

299. The EIS notes that an assessment of the potential for an inadvertent release of drilling mud is part of the feasibility analysis and design for HDDs.³⁷²

300. Geotechnical evaluations for HDD crossings have not been completed for RA-North or RA-Hybrid, and for only some of the proposed crossings along RA-South. The applicant has completed geotechnical evaluations for two of the three HDD crossings at waterbodies and plans to conduct an investigation at the third once access is obtained.³⁷³

301. Additional geotechnical studies for RA-North or RA-Hybrid would not shed light on the relative differences between the route alternatives because the Applicant proposes crossing the same rivers regardless of the route alternative selected.³⁷⁴

302. EERA staff recommends a special permit condition requiring the applicant to prepare a plan for pipeline construction in areas crossing the beach ridge area.³⁷⁵

Location-Specific Risk of Leak or Rupture

303. Chapter 8 of the final EIS addresses risks and potential impacts of a CO₂ release by leak or rupture.³⁷⁶ It addresses the potential impact on humans and the environment, steps to be taken in the event of an accidental release, and steps to be taken to prevent an accidental release.³⁷⁷ The EIS contains a rupture analysis.³⁷⁸

³⁶⁸ Ex. DOC-18, Appendix O at O-30, O-47 (FEIS).

³⁶⁹ Hearing Tr. 151:8–11 (Levi Test.); Ex. DOC-18 at 11-9–10.

³⁷⁰ Ex. DOC-18 at 11-15 (FEIS).

³⁷¹ Ex. DOC-18 at 5-151 (FEIS).

³⁷² Ex. DOC-18 at 5-151 (FEIS).

³⁷³ Ex. DOC-18 at 5-151 (FEIS).

³⁷⁴ Hearing Tr. at 174:6–22 (Levi Test.); Ex. DOC-18, App. O at O3.

³⁷⁵ Ex. DOC-18 at 5-152 (FEIS).

³⁷⁶ Ex. DOC-18 at ES-13–14 and ch. 8 (FEIS).

³⁷⁷ Ex. DOC-18 at ch. 8.

³⁷⁸ Ex. DOC-18 at Appendix G.

304. The EIS addresses location-specific potential impacts of a CO₂ release by noting: “Limited information is available pertaining to the potential impact of CO₂ on wildlife or organisms, specifically in the region of this project.”³⁷⁹

Leak or Rupture Analysis

305. EIS Chapter 8, “Accidental Release of CO₂” assesses the impacts of an unanticipated release of CO₂ in the event of a leak or pipeline rupture based on the rupture analysis contained in EIS Appendix G.³⁸⁰

306. CURE contends that the study identifying the potential impact radius of a leak or rupture does not provide sufficient information and cannot be relied upon.

307. The EIS rupture analysis was performed by a consultant with extensive experience in gas and hazardous liquid pipeline integrity.³⁸¹

308. The EIS rupture analysis uses CANARY modeling software. The use of CANARY modeling software was reasonable. CANARY is the industry standard for pipeline rupture modeling. Use of CANARY was also necessary to check the reasonableness of the Applicant’s CANARY-derived dispersion modeling.³⁸²

309. Moreover, the Department did not entirely rely on its CANARY results. Instead, the Department also performed a CFD analysis to cross-check its results.³⁸³

310. For both sets of analyses, the Department instructed its expert to assume a worst-case scenario to produce conservative results.³⁸⁴

311. CURE witness John Gorman questioned the adequacy of the dispersion modeling found in the EIS. Gorman’s principal concern was that the Department did not explain the assumptions underlying its modeling.³⁸⁵

312. Gorman has no professional experience with CO₂ pipelines, pipeline safety, or modeling a pipeline rupture.³⁸⁶ Gorman admitted that many of the questions he claimed were unanswered were, in fact, addressed in the appendices enclosed with the dispersion modeling.³⁸⁷ Gorman’s claim that his methodological concerns went unanswered is further undermined by attaching the Department’s response to interrogatories answering those questions to his testimony.³⁸⁸ The witness’s superficial

³⁷⁹ Ex. DOC-18 at 8-20 (FEIS).

³⁸⁰ Ex. DOC-18 at ch. 8 (FEIS).

³⁸¹ Ex. CURE-9, SG-4 at 1 (Gorman Rebuttal).

³⁸² Ex. DOC-18, App. G at 11 (FEIS).

³⁸³ Hrg. Tr. at 169:6-168:3 (Levi).

³⁸⁴ Hrg. Tr. at 167:10-14 (Levi).

³⁸⁵ Ex. CURE-5 at 6 (Gorman Direct); Ex. CURE-13 at 3 (Gorman Surrebuttal).

³⁸⁶ Hrg. Tr. at 107:25–109:7 (Gorman).

³⁸⁷ Hrg. Tr. at 110:13-111:18 (Gorman).

³⁸⁸ Ex. CURE-13 at 3 (Gorman Surrebuttal); Hrg. Tr. at 114:14-114:16 (Gorman).

criticisms of the dispersion modeling are due little weight and are insufficient to establish that the Department's methodology was "arbitrary or without foundation."³⁸⁹

313. The EIS's rupture analysis is adequate. It is sufficient to constitute a bona fide scientific investigation that can provide information for governmental units, the proposer of the project, and other persons to evaluate the proposed project.³⁹⁰

Water Consumption

314. The total amount of water to be used for construction of the capture facility and pipeline is not known. The source of the water to be used for construction of the capture facility and pipeline has not been determined.

315. Water used for construction activities would be appropriated from surface water or ground water sources and would be in compliance with applicable standards.³⁹¹ Summit would obtain coverage under individual or general (DNR) water appropriation permit(s) for any surface or groundwater appropriated.³⁹²

316. The DNR, through its water appropriation permitting process, would ensure that water appropriations would not deplete or degrade the water source.³⁹³

317. The source of water to be used for capture facility operations may be an existing commercial well at the Green Plains plant, but plans have not been finalized. Summit has committed to obtain appropriate DNR permits for water used for operations.

318. During operations, the CO₂ capture facility would have estimated water supply needs ranging from 8.2 gallons per minute (gpm) in winter months and 40.9 gpm in summer months, for an average water usage of approximately 13 million gallons per year.³⁹⁴ The ethanol plant withdrew 174 million gallons from its well in 2022, so capture facility use would represent about a seven percent increase in water withdrawal from the well.³⁹⁵

³⁸⁹ See *Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1130 (8th Cir. 1999); see also *Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976) (resolving issues requiring a high level of technical expertise and is properly left to the informed discretion of the responsible agency); *Sierra Club v. U.S. Dep't of Transp.*, 753 F.2d 120, 128 (D.C. Cir. 1985) ("It is clearly within the expertise and discretion of the agency to determine proper testing methods.").

³⁹⁰ Minn. R. 4410.2000, subp. 1.

³⁹¹ Hearing Tr. at 22:18–21 (Zoller Test.).

³⁹² Ex. Summit-13 at 7 (Zoller Direct).

³⁹³ Ex. Summit-13 at 7 (Zoller Direct).

³⁹⁴ Ex. Summit-13 at 8 (Zoller Direct); Ex. DOC-18 at ES-1 (FEIS).

³⁹⁵ Ex. DOC-18 at ES-12, 5-149 (FEIS).

Groundwater Investigations and Potential Impacts

319. Section 5.7.8.2 of the final EIS addresses potential impacts to ground- and surface water.³⁹⁶

320. Groundwater investigations to determine the location of shallow aquifers have not been conducted along the entire length of any of the route alternatives.

321. The EIS notes that:³⁹⁷

Use of sheet piling in locations with a shallow confined aquifer carries the potential that the sheet piling could intersect the aquitard that confines the aquifer, thereby breaching the aquifer. If artesian conditions are present, when the sheet piling is removed the void created can act as a flow path and uncontrolled flow of water can occur. The breaching of a shallow confined aquifer could have significant long-term impacts on groundwater resources. The applicant would conduct geotechnical investigations prior to construction anywhere sheet pile would be used. The applicant has committed to not using sheet piling in beach ridge areas. Should trench wall stability be a concern in beach ridge areas, the applicant would use trench boxes to stabilize the trench walls, which would not result in any additional excavation.

322. At the time of the evidentiary hearing, the applicant had an ongoing groundwater investigation underway to further inform construction practices and is continuing to consult with DNR.³⁹⁸

323. It is typical for these sort of investigations to be conducted after a permit is issued, particularly for route alternatives not proposed by a project applicant. The work requires landowner permission.³⁹⁹

324. The level of engineering analysis sought by CURE is unnecessary for an analytical—as opposed to an encyclopedic—document, and is unwarranted because it would not assist the Commission’s decision making.⁴⁰⁰ Groundwater studies would not shed light on route differences because the routes are close in proximity and the composition of the soil and water in those areas are fairly similar.⁴⁰¹ The potential impact of encountering a shallow aquifer exists for all three route alternatives and the EIS proposes groundwater studies to mitigate the risk regardless of the route alternative chosen.⁴⁰²

³⁹⁶ Ex. DOC-18 at 5-147–48 (FEIS).

³⁹⁷ Ex. DOC-18 at 5-147 (FEIS).

³⁹⁸ Ex. DOC-18 at 5-147 (FEIS); Hrg. Test. at 47:10–12 (O’Konek).

³⁹⁹ Hrg. Test. at 175:11–24 (Levi).

⁴⁰⁰ Hrg. Test. at 173:3–174:5, 174:12–175:24 (Levi).

⁴⁰¹ Hrg. Test. at 173:3–174:5 (Levi).

⁴⁰² Hrg. Test. at 173:6–173:23 (Levi).

325. EERA staff recommends that the applicant develop, in coordination with DNR, a plan for pipeline construction in areas crossing the beach ridge system. The plan would include, at a minimum, measures to minimize the potential for breaching a shallow confined aquifer during construction and contingency measures to mitigate the impacts if a breach should occur.⁴⁰³

Buffering of CO₂ Release

326. CURE contends that the final EIS includes unsupported statements about the buffering ability of soils in the vicinity of the project. It disputes that the sources relied upon for the statements do not support the claim that carbonic acid potentially formed by a CO₂ leak would be buffered by soils and rocks.

327. For example, the EIS asserts that “Carbonic acid potentially formed by a leak or after a rupture would be buffered by the naturally basic surroundings,” but cites in footnote 94 to a generic Minnesota Pollution Control Agency surface waters website.⁴⁰⁴

328. CURE asserts that references cited in footnotes 95 and 96 similarly do not support their associated claims relating to buffering of carbonic acid.

329. EERA explains that the URL links provided in footnotes 94 and 96 take the viewer to a Minnesota Pollution Control Agency (MPCA) landing page. The viewer must click the “maps” tab shown on the landing page. Then, the viewer may click on any of the many data point locations for which water quality is available. Data for locations near the Otter Tail River have pH measurements that fall in the basic range, consistent with the statements in the EIS.⁴⁰⁵

330. EERA further explains that although supporting information is not available via the URL link identified in footnote 95, the sentence it supports in the EIS simply describes “Henry’s Law;” namely, the familiar phenomenon of pop, champagne, or other carbonated liquids going “flat” as CO₂ dissolved in the liquid dissipates into the air.⁴⁰⁶

331. CURE also argues: “It is also notable that this statement and analysis is contradicted by the DNR’s comment on the draft EIS noting that the soil in this region is acidic.”⁴⁰⁷

332. CURE cites to Ex. DNR-1, which is DNR’s comment regarding the scope of the EIS, and not its comment on the draft EIS.⁴⁰⁸ The exhibit does not appear to address the acidity of soils in the project area.

⁴⁰³ Ex. DOC-18 at 5-148 (FEIS).

⁴⁰⁴ Ex. DOC-18 at 8-21 n.94.

⁴⁰⁵ DOC Reply Br. At 10 n.6.

⁴⁰⁶ DOC Reply Br. At 10 n.6.

⁴⁰⁷ CURE Initial Br., 15.

⁴⁰⁸ Ex. DNR-1 (May 18, 2023 Letter).

333. DNR’s comment on the draft EIS does not contain the words “acid,” “acidic,” or “basic.” The comment does state that “[s]oils in parts of the Red River Valley (such as between Detroit Lakes and Fargo) are very corrosive to metals.”⁴⁰⁹

334. The final EIS states that “[s]ome soil types in parts of the Red River Valley can be corrosive,” and explains that “to protect against corrosion, the applicant would apply an external fusion-bonded epoxy coating to the pipeline and install a cathodic protection system and electrical mitigation along the pipeline.”⁴¹⁰

“Similar” Wetland Impacts and Soil

335. CURE contends that the EIS inaccurately characterizes soils found along the route alternatives as “similar” to each other, and that it inaccurately describes the impacts to wetlands as being “similar” across all route alternatives.⁴¹¹

336. Section 5.7.6 of the final EIS addresses soils in the project area.⁴¹² Section 5.7.8 addresses water resources in the project area.⁴¹³

337. The EIS reflects conclusions that because the routes are in close proximity and the composition of the soil and the water in those areas are all fairly similar.⁴¹⁴

338. CURE apparently agrees that the dominant soil type is the same for all portions of the proposed pipeline.⁴¹⁵

339. The EIS acknowledges that “soil characteristics are similar but vary among the route alternatives.” It identifies, by number of acres, varying sensitive soil characteristics within each route alternative.⁴¹⁶

340. The EIS details different types of surface-water bodies for the three route alternatives.⁴¹⁷ It also identifies different groundwater resources and wells near the route alternatives.⁴¹⁸ Although the route alternatives would cross a similar number of drainage ditches the EIS acknowledges that RA-North would cross fewer rivers and streams than RA-Hybrid and RA-South.⁴¹⁹

⁴⁰⁹ DNR Comments (February 23, 2024 Letter) (eDockets No. [20242-203780-01](#)).

⁴¹⁰ Ex. DOC-18 at 5-128 (FEIS).

⁴¹¹ Proposed Findings of Fact, Conclusions of Law, and Recommendations Submitted by Cure, 33.

⁴¹² Ex. DOC-18 at 5-124–129 (FEIS).

⁴¹³ Ex. DOC-18 at 5-135–152 (FEIS).

⁴¹⁴ Ex. DOC-18 at 5-147 (FEIS); Hrg. Test. at 173:24–174:5 (Levi).

⁴¹⁵ CURE Initial Br., 21.

⁴¹⁶ Ex. DOC-18 at 5-126 and table 5-44 (FEIS).

⁴¹⁷ Ex. DOC-18 at 5-136 and tables 5-47–50 (FEIS).

⁴¹⁸ Ex. DOC-18 at 5-143–44.

⁴¹⁹ Ex. DOC-18 at 5-135.

341. The EIS concludes that “Based on current knowledge of groundwater conditions in the ROI, impacts on groundwater would be similar for each of the route alternatives.”⁴²⁰

342. Whether soil characteristics or likely water impacts are “similar” is a subjective conclusion. Reasonable people may disagree about whether facts underlying the EIS’s conclusions constitute a similarity.

343. The EIS’s conclusions regarding the similarity of soil and potential water impacts are reasonable.

g. Compliance with Rules

344. The contents of the final EIS corresponds to the components of the standard format set forth in Minn. R. 4410.2300.

345. The EIS was prepared in compliance with applicable procedural requirements, and it contains all content required by Minnesota Statutes chapter 116D and 216G and Minnesota Rules chapters 4410, 7852, and 1405. The record establishes that the Department made a good-faith effort to comply with all applicable procedural requirements.⁴²¹

346. The Department adequately complied with all applicable procedural requirements in preparing the EIS.⁴²²

347. The Department demonstrated a commitment to sincere, responsive public engagement throughout the review process. The Department significantly revised the description of the project’s purpose, the alternatives to be considered, and types of impacts to be considered based on public input.⁴²³

IV. Routing Permit Denial

348. CEO, along with many public commenters, argue that the Commission should deny a routing permit because (1) the Project does not benefit the natural environment; (2) the touted climate benefit of the Project is speculative; (3) the Project will slow progress towards economy-wide decarbonization goals; (4) the Project will have unjustifiable negative impacts on existing land use and the local agricultural economy; (5) federal government rules regulating CO₂ pipelines are insufficient to protect the public from significant risks.

⁴²⁰ Ex. DOC-18 at 5-148.

⁴²¹ See, e.g., Ex. DOC-18, App. O (Final Environmental Impact Statement).

⁴²² Minn. R. 4410.2800, subp. 4(C); see *No Power Line, Inc.*, 262 N.W.2d at 327 (requiring only “full, fair, bona fide compliance”).

⁴²³ See, generally, Ex. DOC-10 (Final Scoping Decision).

349. Similarly, CURE argues that “[d]enial of the permit, or selecting the No Action Alternative, is well within the Commission’s authority and role as defined by statute and regulation.”

A. CEO-Cited Authority

350. CEO cite Minn. Stat. § 216G.02 and Minn. R. 7852.1900 as bases for the Commission to deny a routing permit to the Applicant.

351. Minn. Stat. § 216G.02 does not provide authority to deny a routing permit. Minn. Stat. § 216G.02 requires the Commission to:

provide a procedure that the commission will follow in issuing pipeline routing permits and require the commission to issue the permits within nine months after the permit application is received by the commission, unless the commission extends this deadline for cause.

352. A certificate of need may be denied under Minn. Stat. § 216B.243, subd. 5; however, this project does not require a certificate of need.

353. The purpose of Minn. R. 7852.0100–4100 (the Routing Permit Chapter) is “to aid in the selection of a pipeline route and to aid in the understanding of its impacts and how those impacts may be reduced or mitigated through the preparation and review of information contained in pipeline routing permit applications and environmental review documents.”⁴²⁴

354. Minn. R. 7852.0800 provides that the Commission “shall issue” a pipeline routing permit within nine months from application acceptance unless the deadline is extended for cause.⁴²⁵

355. Minn. R. 7852.1900 establishes a scope, purpose, considerations, and criteria for “selecting a route for designation and issuance of a pipeline routing permit[.]” Neither Minn. R. 7852.1900, nor any other part in the Routing Permit Chapter, contemplates denial of a routing permit, only the weighing of factors to determine a pipeline’s permitted route.

356. A different rule, Minn. R. 7851.0120, establishes criteria for a certificate of need; however, this project does not require a certificate of need.

357. When the legislature intends to authorize the Commission to deny an application, it specifically provides for denial.⁴²⁶

358. The words “deny” or “denial” do not appear in Minn. Stat. §§ 216G.01–12.

⁴²⁴ Minn. R. 7852.0200, subp 3.

⁴²⁵ Minn. R. 7852.0800.

⁴²⁶ See Minn. Stat. § 216B.243, subd. 5.

B. CURE-Cited Authority

359. CURE cites as authority Minn. Stat. § 116D.04, subd. 6, and Minn. R. 4410.2800, subp. 5.

360. Minn. R. 4410.2800, subp. 5, requires a Responsible Government Unit to prepare an adequate EIS within a certain time period of determining that an EIS is inadequate. It does not authorize denial or refusal to issue a routing permit once an adequate EIS is prepared.

361. Minn. Stat. § 116D.04, subd. 6, provides:

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

362. Under Minn. Stat. § 216G.02 and Minn. R. 7852.0800, the Commission must issue a routing permit. However, that requirement must be interpreted consistent with the prohibition in Minn. Stat. § 116D.04, subd. 6.

363. Issuing a routing permit is therefore prohibited when issuance would significantly affect the quality of the environment and there is a “feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.”⁴²⁷

364. The extent of the Commission’s statutory discretion does not include denial of a routing permit for the Project for any reason. The Commission must (1) select a pipeline route or (2) find that issuing a permit for the Project would significantly affect the quality of the environment and identify a feasible and prudent alternative to issuing a routing permit.⁴²⁸

⁴²⁷ Minn. Stat. § 116D.03, subd. 1 (“to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06”).

⁴²⁸ See *Enbridge Energy, Limited Partnership*, 964 N.W.2d 173, 190 (Minn. Ct. App. 2021) (the Commission must adequately explain the reasons for its conclusions).

365. A final decision to grant or deny a permit may not be made until the EIS is determined to be adequate.⁴²⁹

V. Minnesota Environmental Policy Act Analysis

366. Minn. Stat. § 116D.04, subd. 6, is a provision of MEPA.⁴³⁰

367. The Minnesota Court of Appeals has recognized that, when applying Minn. Stat. § 116D.04, subd. 6, in a circumstance where there is “no option without environmental consequences,” the challenge is “to balance those harms.”⁴³¹ Speculation or “generalized concern about possible environmental effect[s]” are insufficient to support denial of a permit.⁴³²

A. Significant Impact

368. Minn. Stat. § 116D.04, subd. 6, applies to issuance of a routing permit only when issuance of the permit would significantly affect the quality of the environment.

369. A determination that issuance of the permit would significantly affect the quality of the environment is subject to the Commission’s discretion, but must be supported by substantial evidence.⁴³³

370. The EIS describes impact intensity using the following terms: negligible, minimal, moderate, or significant.⁴³⁴

371. The EIS defines “significant impacts” as those that:⁴³⁵

alter an existing resource condition or function to the extent that the resource is impaired or cannot function. Significant impacts are likely noticeable or predictable to the average observer. Impacts might be spread out over a large area making them difficult to observe but can be estimated by modeling. Significant impacts can be of any duration and affect common or uncommon resources.

372. Some impacts can be avoided or minimized; some might be unavoidable but can be minimized; others might be unavoidable and unable to be minimized but can

⁴²⁹ Minn. R. 4410.3100, subp. 1.

⁴³⁰ Minn. Stat. §§ 116D.01–.06.

⁴³¹ *In re: Enbridge Energy, Limited Partnership*, 964 N.W.2d 173, 210 (Minn. Ct. App. 2021).

⁴³² *In re: Combined Air and Solid Waste Permit No. 2111-91-OT-1*, 489 N.W.2d 811, 814 (Minn. Ct. App. 1992).

⁴³³ *Combined Air and Solid Waste Permit No. 2111-91-OT-1*, 489 N.W.2d at 814; *Enbridge Energy, Limited Partnership*, 964 N.W.2d 173 at 188–89.

⁴³⁴ Ex. DOC-18 at 5-2 (FEIS).

⁴³⁵ Ex. DOC-18 at 5-2 (FEIS).

be rectified (corrected). The level at which an impact can be mitigated might change the impact intensity level.⁴³⁶

373. The EIS frequently concludes that environmental impacts of the Project are expected to be negligible, minimal, or not significant.⁴³⁷

374. The EIS identifies some expected or possible resource impairments.

375. The EIS states that the disturbance from construction could result in reduced crop production post construction. These impacts would arise because of changes in soils from the construction disturbance and last up to five years.⁴³⁸ The EIS proposes mitigation for this impact.⁴³⁹ Landowners would be compensated for lost crops due to construction according to the terms of their individual easement agreements.⁴⁴⁰

376. Operation of the project would result in long-term impacts on prime farmland and farmland of statewide importance at the capture facility, MLVs, and permanent access roads.⁴⁴¹ However, the amount of prime farmland and farmland of statewide importance that would not be available for farming is limited to the capture facility, MLVs, and permanent access roads and would be minimal.⁴⁴²

377. Forested wetlands within the operational ROW would be maintained as emergent wetlands resulting in a permanent, significant impact to specific forested wetlands.⁴⁴³ However, construction activities would convert just 0.2 acre of forested wetlands to emergent wetlands, which the EIS ultimately characterizes as a long-term, moderate impact. The amount of wetlands that would be impacted by any of the three route alternatives is minimal, and the routes would avoid many wetlands.⁴⁴⁴

⁴³⁶ Ex. DOC-18 at 5-2 (FEIS).

⁴³⁷ See Ex. DOC-18 at 5-6 (“Impacts for [. . .] commercial economies, forestry, and mining—are expected to be negligible”); 5-20 (“The project would not result in significant impacts on air quality during construction or operation in Census Tract 9609, or any other census tract crossed by the project”); 5-96 (“construction emissions are not expected to cause or significantly contribute to a violation of an applicable ambient air quality standard”); 5-119 (“Project activities within the route alternatives would not have a significant direct impact on federally listed species”); 5-120 (“tree removal would have a negligible impact on potential habitat for bat species”); 5-120 (“While the direct take of eggs and young would be significant and permanent to the individual birds, it would be a negligible, long-term impact on regional populations of the affected species”); 5-147 (“Ground disturbance or excavation associated with installation of a 4-inch-diameter pipeline is not expected to significantly affect groundwater resources”); 5-162 (“Construction of the pipeline along any of the three route alternatives would not significantly diminish wildlife habitat quality or availability”); 5-163 (“Impacts on displaced wildlife would be localized, short term, and negligible.”); see, *generally*, chapter 10 (FEIS).

⁴³⁸ Ex. DOC-18 at 5-70, 10-12 (FEIS).

⁴³⁹ Ex. DOC-18 at 5-72–73 and 5-128–29 (FEIS).

⁴⁴⁰ Ex. DOC-18 at 5-73 (FEIS).

⁴⁴¹ Ex. DOC-18 at 5-71 (FEIS).

⁴⁴² Ex. DOC-18 at 5-72 (FEIS).

⁴⁴³ Ex. DOC-18 at 5-156 (FEIS).

⁴⁴⁴ Ex. DOC-18 at 10-17 (FEIS).

378. It is reasonable to conclude that issuing a routing permit for the Project will not significantly affect the quality of the environment.

379. In the absence of a significant effect on the quality of the environment, Minn. Stat. § 116D.04, subd. 6, does not apply.

B. PHMSA Regulation Adequacy

380. CEO argues that the routing permit should be denied because minimum federal safety standards for CO₂ pipelines promulgated by PHMSA are inadequate.⁴⁴⁵ Specifically, CEO argues that this inadequacy is a concern for public safety.⁴⁴⁶

381. CEO acknowledges that PHMSA has the exclusive regulatory authority over safety standards regarding the design, construction, operation, and maintenance of CO₂ pipelines. Minnesota state regulators are pre-empted from imposing supplemental safety requirements.⁴⁴⁷

382. PHMSA is currently in the process of updating its CO₂ pipeline safety standards.⁴⁴⁸

383. Pipeline design, installation, and operation would incorporate measures to minimize the risks of an accidental release. To further reduce the potential for an accidental release, the Applicant has committed to additional measures that would exceed current PHMSA safety standards.⁴⁴⁹

384. The Applicant would implement public and emergency response awareness programs and comply with new PHMSA regulations for CO₂ pipelines once established.⁴⁵⁰

385. The EIS addresses the potential risks to public safety and identifies mitigations.⁴⁵¹

386. Possible risks arising from PHMSA regulation (in)adequacy are a speculative and generalized concern that does not constitute a significant effect on the quality of the environment and so would not be a basis to deny a permit under MEPA.

⁴⁴⁵ CEO Initial Br., 29.

⁴⁴⁶ CEO Initial Br., 29.

⁴⁴⁷ CURE-8, Schedule EG-2 (Accufacts Report) at 1.

⁴⁴⁸ Ex. DOC-18 at ES-13 (FEIS).

⁴⁴⁹ Ex. DOC-18 at ES-13 (FEIS).

⁴⁵⁰ Ex. DOC-18 at ES-14 (FEIS).

⁴⁵¹ See, generally Ex. DOC-18 at ch. 8 (FEIS).

C. Alternatives to Permit Issuance

387. If the Commission finds that issuing a routing permit will significantly affect the quality of the environment, it must either issue a routing permit or identify a feasible and prudent alternative to the Project.

388. The purpose of the project as defined in the final scoping decision is to capture and transport CO₂ from the ethanol plant via pipeline to permanent underground sequestration facilities in North Dakota and to reduce the CI score of ethanol produced at the ethanol plant and enhance its marketability in LCFS markets.⁴⁵²

389. As set forth above, the EIS considered the following alternatives to the Project: no action, alternative routes, alternative technologies, modified designs or layouts (pipe diameter), modified scale or magnitude (reduced throughput), and alternatives incorporating reasonable mitigation measures.

390. Chapter 4 of the EIS analyzes alternatives to the Project, Chapter 6 analyzes alternative technologies, and Chapter 7 analyzes the no-action alternative, specifically.

391. The EIS analyzed two route alternatives in addition to the route proposed by the Applicant, the relative merits of which are evaluated in greater detail in following sections of this report.

392. There is “no need to consider an alternative solution whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative.”⁴⁵³

393. The alternative technologies analyzed in the EIS may, if combined, reduce the CI score of ethanol produced at the ethanol plant at least as much as the Project.⁴⁵⁴ However, no alternative technology accomplishes the first component of the project’s purpose: to capture and transport CO₂ from the ethanol plant via pipeline to permanent underground sequestration facilities in North Dakota.

394. No alternative technology analyzed in the EIS eliminates CO₂ emissions from the fermentation process, which the Project is intended to capture and transport for sequestration. Even if the alternative technologies were implemented and offset fermentation-generated CO₂, fermentation would still generate CO₂ which would enter the atmosphere in the absence of capture and sequestration.

⁴⁵² Ex. DOC-18 at 6-37 (FEIS).

⁴⁵³ *Combined Air and Solid Waste Permit No. 2111-91-OT-1*, 489 N.W.2d at 815 (Minn. Ct. App. 1992) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 829–30 (Minn.1977)) (internal quotation omitted).

⁴⁵⁴ See DOC-18 at table 6-15 (FEIS).

395. Alternative technologies studied in the EIS may be a feasible and prudent alternative to the project only if the CO₂ capture-and-transport aspect of the Project's purpose is disregarded.

396. The alternative technologies analyzed in the EIS are not substitutes for the Project. In that sense, they are not feasible and prudent alternatives to the Project.

397. The alternative technologies and the Project are not mutually exclusive. Implementation of the Project does not preclude implementation of the alternative technologies. They can all be implemented, resulting in even greater GHG emission reductions.⁴⁵⁵

398. Absent the Project, the alternative technologies alone, if implemented, do not guarantee the added value of participation in LCFS markets and may not result in conditions that make alternative agricultural practices prudent.⁴⁵⁶

399. The EIS concludes that modified designs or layouts "would not result in a significant environmental benefit over the proposed project, and diameters smaller than four inches would pose challenges for pipeline inspection."⁴⁵⁷

400. Similarly, the EIS concludes that "reduced throughput would likely not have significant environmental benefit compared to the project as proposed and could affect the ability to safely operate and maintain the pipeline."⁴⁵⁸

401. If the no action alternative is selected, neither the benefits nor the harms of the Project will occur. Significantly, the ethanol plant would continue to emit CO₂ into the atmosphere as permitted.⁴⁵⁹

402. CURE and CEOs assert that the Project will prolong or perpetuate the use of ethanol. They argue that this will delay uptake of their preferred climate solutions like the use of electric vehicles and could result in a net increase in CO₂ emissions.⁴⁶⁰ CURE asserts that because it is possible for captured and transported CO₂ to be used for enhanced oil recovery, the Project's GHG emissions benefits are overstated.⁴⁶¹ And

⁴⁵⁵ See DOC-18 at 6-38 and table 6-15 (FEIS) (describing the impacts of implementing the Project and the alternative technologies).

⁴⁵⁶ Public Comments (Green Plains Inc.) (March 15, 2024), at 1–2 (eDocket No. [20243-204403-02](#)).

⁴⁵⁷ Ex. DOC-18 at 4-4 (FEIS).

⁴⁵⁸ Ex. DOC-18 at 4-5 (FEIS).

⁴⁵⁹ Ex. DOC-18 at 7-1 (FEIS).

⁴⁶⁰ See, e.g., Public Comment Batch at 6–7 (Sept. 11, 2024) (eDocket No. 20249-210120-01); Public Comment Batch at 18 (Sept. 11, 2024) (eDocket No. 20249-210120-01); Comments by CURE at 10 (Sept. 11, 2024) (eDocket No. 20249-210142-01); Public Comment Batch at 5–6 (Sept. 12, 2024) (eDocket No. 20249-210164-01).

⁴⁶¹ Ex. CURE-7 at 8–9 (Secchi Direct).

CURE disputes that the Project can capture 100% of CO₂ emitted during the fermentation process.⁴⁶²

403. Consistent with the scoping decision, the EIS does not predict future ethanol production.⁴⁶³

404. The effect on the project on the continued use of internal combustion engine vehicles is not within the EIS scope.

405. There is not substantial evidence in the record to determine that granting the permit will prolong or perpetuate the use of ethanol or internal combustion engines.

406. The EIS concludes that the project would provide a net benefit to GHG emissions at all analyzed capture rates 40% and higher because the emissions sequestered from ongoing annual operations would outweigh construction and operation emissions.⁴⁶⁴ 100% capture is not required to obtain a net GHG emissions benefit.

407. The future of the ethanol industry, the impact of this project on the industry, its impact on continued use of internal combustion engines, and the possibility that captured and transported CO₂ will be used for EOR are unsupported by substantial evidence in this record or are too remote and speculative to support taking no action.

408. The record does not identify a feasible and prudent alternative to granting a routing permit for the Project.

409. The EIS recommends mitigation measures. Alternatives incorporating reasonable mitigation measures are considered in the sections below.

VI. Factors for a Routing Permit

410. Pursuant to Minn. R. 7852.0100, subp. 31, “route” is defined as the proposed location of a pipeline between two endpoints. A route may have a variable width from the minimum required for the pipeline ROW up to 1.25 miles. The statutory and rule criteria for designating a route are found in Minn. Stat. §§ 216G.01–12 and Minn. R. Ch. 7852.

411. Minn. Stat. § 216G.02, subd. 3, requires that the Commission adopt rules that apply only to the route of pipelines and not set safety standards for the construction of pipelines.

412. Minn. Stat. § 216G.03, subd. 4, advises that the issuance of a pipeline routing permit and subsequent purchase and use of the route locations is the only site

⁴⁶² Ex. CURE-1 at 11–12 (CURE comments on DEIS) and Ex. CEO-1 at 7–8 (Comments on Scoping EAW and DSDD).

⁴⁶³ Ex. DOC-18 at 7-1 (FEIS); Ex. DOC-10 at 2, 8 (FSDD).

⁴⁶⁴ Ex. DOC-18 at 10-14 (FEIS).

approval required to be obtained by the person owning or constructing the pipeline. The pipeline routing permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments.

413. In addition to Minn. Stat. §§ 216G.01–12, the Commission is governed by Minn. R. 7852.1900, which mandates consideration of the following factors when determining whether to issue a Route Permit for a pipeline:

- a. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- b. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- c. lands of historical, archaeological, and cultural significance;
- d. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- e. pipeline cost and accessibility;
- f. use of existing rights-of-way and right-of-way sharing or paralleling;
- g. natural resources and features;
- h. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
- i. cumulative potential effects of related or anticipated future pipeline construction; and
- j. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

414. There is sufficient evidence in this record to assess the Project using the criteria and factors set forth above.

VII. Application of Routing Factors to Proposed Routes

415. Minn. R. 7852.1900 instructs a decision-maker to “consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential

impacts of all proposed routes so that it may select a route that minimizes human and environmental impact.”

416. The known impacts from a pipeline are those that are related to construction, since these impacts will occur. Accordingly, significant weight is given to construction-related impacts when analyzing and applying the routing factors to the Project. Other impacts, such as future events that may or may not happen at all, and with particular impacts that cannot be predicted because they would depend on then-present, site-specific conditions, are largely speculative in nature and are given less weight when considering the routing criteria.

417. In evaluating the proposed routes, the Administrative Law Judge considered and applied the criteria described in Minn. R. 7852.1900, subp. 3.

A. Human Settlement

418. Minn. R. 7852.1900, subp. 3(A) requires consideration of impacts on “human settlement, existence and density of populated areas, existing and planned future land use, and management plans.”

419. The FEIS evaluated potential impacts and mitigation measures related to human settlement as follows: aesthetics, cultural resources, environmental justice, land use and zoning, noise, populated areas, property values, public health and safety, public services and infrastructure, recreation, socioeconomics, and tribal treaty rights.⁴⁶⁵

420. The Project is located entirely within Otter Tail and Wilkin Counties.⁴⁶⁶ The ethanol plant, the proposed capture facility, and the easternmost point of all three route alternatives are near Fergus Falls, just north and outside of the Fergus Falls city limits.⁴⁶⁷ Fergus Falls is the only municipality within 0.5 mile of any of the three route alternatives. The city of Breckenridge is located about 1 mile south of RA-North and about 2 miles north of RA-Hybrid and RA-South.⁴⁶⁸

1. Aesthetics

421. Short-term, minimal to moderate aesthetic impacts will occur during construction. Impacts are unavoidable. Long-term aesthetic impacts in this area are not anticipated. The pipeline would be underground and not visible during Project operation. MLVs would create long-term aesthetic impacts within a small viewshed. The capture facility would be located at the ethanol plant and its impact would be incremental to the viewshed. Aesthetic impacts from Project operation would be negligible to minimal, with no noticeable difference among the route alternatives.⁴⁶⁹

⁴⁶⁵ Ex. DOC-18 at 5-7 – 5-67 (FEIS).

⁴⁶⁶ Ex. DOC-18 at 5-4 (FEIS).

⁴⁶⁷ Ex. DOC-18 at 5-61 (FEIS).

⁴⁶⁸ Ex. DOC-18 at 5-38 (FEIS).

⁴⁶⁹ Ex. DOC-18 at 5-7 (FEIS).

422. No schools, churches, or similar gathering places are within 1,600 feet of the route width of the route alternatives. There are 33 residences within 1,600 feet of the route width of RA-North, 39 residences within 1,600 feet of the route width of RA-Hybrid, and 34 residences within 1,600 feet of the route width of RA-South.⁴⁷⁰

423. The Sample Route Permit includes measures to mitigate potential aesthetic impacts.⁴⁷¹ Additionally, Summit proposes to use the HDD method to cross the Pelican River, Otter Tail River, Bois de Sioux River, and King of Trails Scenic Byway. Because vegetation would not be cleared between the HDD entry and exits, aesthetic impacts at these locations would be minimized.⁴⁷²

2. Cultural Resources/Values

424. Agricultural operations, which can have contemporary cultural value, would be impacted temporarily along each of the route alternatives, but the Project would not remove cultivated land from production, and landowners would be compensated for operational pipeline easements as well as for use of temporary construction workspaces.⁴⁷³

425. The Project could temporarily impact hunting activities and the habitats of plants and wildlife of Tribal cultural interest during construction and until restoration of disturbed areas is complete. The Project would not result in temporary closures of hunting areas. The Applicant would continue to communicate with the Fergus Falls Fish & Game Club regarding its Orwell property to minimize visual and noise impacts during construction. The pipeline would be underground and therefore impacts are not anticipated during operations. Overall, impacts on hunting activities are anticipated to be short term and minimal. Impacts on hunting are also influenced greatly by construction timing; that is, if construction overlaps an active hunting season.⁴⁷⁴

426. The EIS concluded that the remaining resources defining the contemporary culture of the residents of Otter Tail and Wilkin Counties are located largely outside of the Project area and would not be directly impacted by the Project.⁴⁷⁵

427. Construction and operation of the Project is not anticipated to impact or alter the work and leisure pursuits of residents in the area in such a way as to impact the underlying culture of the area. The EIS concluded that overall, potential impacts on cultural resources during construction and operation of the Project are anticipated to be minimal and would be similar for all route alternatives.⁴⁷⁶

3. Environmental Justice

⁴⁷⁰ Ex. DOC-18 at 5-8 (FEIS).

⁴⁷¹ Ex. DOC-18, Appendix H at Sections 7.11 and 7.14 (Sample Routing Permit) (FEIS).

⁴⁷² Ex. DOC-18 at 5-11 (FEIS).

⁴⁷³ Ex. DOC-18 at 5-11 (FEIS).

⁴⁷⁴ Ex. DOC-18 at 5-11, 5-14 (FEIS).

⁴⁷⁵ Ex. DOC-18 at 5-14 (FEIS).

⁴⁷⁶ Ex. DOC-18 at 5-11, 5-14 (FEIS).

428. The EIS identified a low number of minorities residing in Otter Tail County (9.5%) and Wilkin County (9.0%), which is below that of the state (23.7%). Otter Tail County has 8.8% of households below the poverty level and Wilkin County has 13.5% below the poverty level, compared to 9.3% for the state.⁴⁷⁷ The route widths of all three route alternatives intersect Census Tract 9609, which was identified by the MPCA screening tool as an environmental justice area of concern because 43% of the population has a reported income that is less than 200 % of the federal poverty level.⁴⁷⁸ However, no census tracts within the route widths for the route alternatives were identified to have a meaningfully greater low-income or minority population when compared to their respective counties.⁴⁷⁹ Overall, environmental justice impacts from construction and operation of the Project would not result in disproportionate adverse impacts for environmental justice areas of concern and are similar across the three route alternatives.⁴⁸⁰

429. The record demonstrates Summit's extensive coordination with and commitment to building relationships with Tribes, Tribal Communities, and Native American-Owned businesses. For example, among other activities, in February of 2022, Summit reached out to Tribally-owned and operated enterprises and Native American-owned businesses to explore job opportunities. This outreach includes working with Tribal Employment Rights Offices (TERO) to maximize potential job opportunities related to the Project. Additionally, Summit has demonstrated its commitment to partnering with Tribes and Tribal communities to invest in programs and services to combat violence against Indigenous people.⁴⁸¹

4. Land Use and Zoning

430. Land crossed by all three route alternatives is primarily used for agriculture. Except for road, railroad, and public water crossings, the Project is located entirely on privately owned land.⁴⁸² The Applicant has secured voluntary easements for approximately 83% of the pipeline route along RA-South (nearly 55 landowners).⁴⁸³

431. The Project would result in temporary changes to current land uses, but most land uses would be allowed to revert to prior uses following construction. Agricultural land in the construction workspace would generally be taken out of production for one growing season and restored to previous use following construction.⁴⁸⁴ Following construction, lands impacted by construction will be restored to pre-construction conditions and existing agricultural activities will resume, except at permanent aboveground facility sites (i.e., MLV sites, the capture facility, and

⁴⁷⁷ Ex. DOC-18 at 5-17 (FEIS).

⁴⁷⁸ Ex. DOC-18 at 5-15 (FEIS).

⁴⁷⁹ Ex. DOC-18 at 5-19 (FEIS).

⁴⁸⁰ See Ex. DOC-18 at 5-15 – 5-20 (FEIS).

⁴⁸¹ Ex. Summit-13 at 5-6 (Zoller Direct).

⁴⁸² Ex. DOC-18 at 5-20 – 5-21, 11-6 (FEIS).

⁴⁸³ Ex. Summit-12 at 5 (O'Konek Direct).

⁴⁸⁴ Ex. DOC-18 at 5-25 (FEIS).

permanent access roads). Permanent impacts to agricultural land are only anticipated at MLV locations that will be fenced and removed from current use (approximately 0.7 acres).⁴⁸⁵ Generally, the existence of a pipeline easement is compatible with row crop agricultural practices, and long-term impacts would be minimal after restoration is complete.⁴⁸⁶ The Applicant has developed the Minnesota ECP and Minnesota APP, which include best management practices (BMPs) and Project-specific measures that would be implemented to minimize and mitigate impacts to agricultural land.⁴⁸⁷ Additionally, the Applicant proposed a number of additional mitigation measures to avoid or minimize impacts on agricultural lands.⁴⁸⁸ Additionally, the Sample Route Permit includes measures to mitigate potential impacts to agricultural land.⁴⁸⁹

432. The Project would be compatible with local and regional land use plans. The Project would not impair the counties' ability to manage the orderly development and use of land and water resources and impacts on local zoning due to the Project are anticipated to be minimal.⁴⁹⁰

433. Overall, impacts on land use and zoning are anticipated to be minimal and the same for each of the three route alternatives.⁴⁹¹ Additionally, the Sample Route Permit includes measures to mitigate potential impacts to land use and zoning.⁴⁹²

5. Noise

434. There are 33 residences and two businesses within 1,600 feet of the route width for RA-North; 34 residences and three businesses within 1,600 feet of the route width for RA-South; and 39 residences and one business within 1,600 feet of the route width for RA-Hybrid.⁴⁹³ RA-North would have the most noise sensitive receptors (NSRs) within 400 feet of the pipeline centerline (21 NSRs), followed by RA-Hybrid (17 NSRs), then RA-South with the fewest (10 NSRs). RA-Hybrid would have the most NSRs within 800 feet of the centerline (34 NSRs), followed by RA-North (32 NSRs), then RA-South with the fewest (27 NSRs).⁴⁹⁴

435. Heavy equipment needed to construct the pipeline would have an intermittent, short-term impact on noise levels in the vicinity of the Project during construction. Except for HDDs and some hydrostatic testing activities, construction would be limited to daytime hours. Members of the public would not be expected to experience this level of noise due to their distance from operating equipment. Construction equipment noise would be expected to decrease to levels below state

⁴⁸⁵ Ex. Summit-11 at 6 (Powell Direct).

⁴⁸⁶ Ex. DOC-18 at 5-25 (FEIS).

⁴⁸⁷ See Ex. DOC-18, Appendix D (Minnesota ECP) and Appendix E (Minnesota APP) (FEIS).

⁴⁸⁸ Ex. DOC-18 at 5-73 – 5-74 (FEIS).

⁴⁸⁹ Ex. DOC-18, Appendix H at Sections 6.4, 7.4, 7.13 (Sample Routing Permit) (FEIS).

⁴⁹⁰ Ex. DOC-18 at 5-23 – 5-24, 5-27 (FEIS).

⁴⁹¹ Ex. DOC-18 at 5-20 – 5-21, 11-6 (FEIS).

⁴⁹² Ex. DOC-18, Appendix H at Sections 7.24 and 8 (Sample Routing Permit) (FEIS).

⁴⁹³ Ex. DOC-18 at 5-30 – 5-31 (FEIS).

⁴⁹⁴ Ex. DOC-18 at 5-36 (FEIS).

daytime standards within 500 to 1,600 feet. The Project is expected to conform to state noise standards. Compared to the other route alternatives, RA-South would have fewer NSRs close to the construction workspace but more NSRs within 0.5 mile of an HDD entry.⁴⁹⁵

436. The Applicant would use HDD methods for some waterbody, road, and railroad crossings. Noise from HDDs would be noticeable but temporary, typically lasting five to six days or more, depending on the length and depth of the drill path. RA-North would have nine NSRs within 0.5 mile of an HDD entry, RA-Hybrid would have seven, and RA-South would have 11. Except for the HDD at the Red River for RA-North (975 feet) and the HDD at the Pelican River for RA-South (950 feet), the closest NSRs would be more than 1,000 feet from the HDD entry.⁴⁹⁶ Noise attenuation (decrease with distance) would vary by HDD location due to topography and weather conditions. Based on field measurements collected on active HDD operations, the noise level for a 4-inch pipeline HDD is expected to be less than 60 dB at 1,320 feet, less than 55 dB at 2,640 feet, and not audible at 5,280 feet (one mile).⁴⁹⁷

437. EERA staff recommended, and MDH concurred, that the Applicant provide documentation of coordination with residents located within 1,320 feet of HDD entries, including documentation of locations of sound dampening barrier walls and a plan for monitoring noise levels at these locations during HDD operations. The information should be provided 30 days prior to submittal of the Plan and Profile.⁴⁹⁸ As demonstrated by Summit, the equipment needed to construct the HDD would have a temporary and short-term impact on noise levels in the vicinity of the Project, and noise levels would decrease based on distance, topography, and weather conditions. Additionally, Summit has committed to coordinating with nearby landowners prior to starting HDDs and determining the need for noise mitigation and noise monitoring based on feedback received from landowners during construction.⁴⁹⁹

438. Noise from the operation of the capture facility is not expected to result in a perceptible increase in the sound levels at NSRs near the capture facility and would not be distinguishable from the noise already produced at the ethanol plant. Noise from the CO₂ capture equipment would comply with all local and state requirements. Operation of the pipeline facilities would not have a noticeable impact on ambient sound levels.⁵⁰⁰

439. Because the Project is expected to conform to state noise standards and the Applicant would use barrier walls as needed for mitigating noise from HDDs, overall, noise impacts would be temporary, minimal, and short term for each of the three route

⁴⁹⁵ Ex. DOC-18 at 5-28, 5-35 – 5-37 (FEIS).

⁴⁹⁶ Ex. DOC-18 at 5-35 – 5-36 (FEIS).

⁴⁹⁷ Ex. DOC-18 at 5-36 (FEIS).

⁴⁹⁸ Ex. DOC-18 at 5-38 (FEIS).

⁴⁹⁹ Ex. Summit-13 at 16 (Zoller Direct) and Ex. DOC-18 at 5-36 (FEIS).

⁵⁰⁰ Ex. DOC-18 at 5-39 (FEIS).

alternatives.⁵⁰¹ Additionally, the Sample Route Permit includes measures to mitigate potential impacts from noise.⁵⁰²

6. Populated Areas

440. The FEIS concluded that there would be no impacts on populated areas (incorporated areas, and census-designated places) because no populated areas are within 1,600 feet of the route width for any of the three route alternatives.⁵⁰³

7. Property Values

441. Because property values are influenced by a complex interaction between factors specific to each individual piece of real estate as well as local and national market conditions, the effect of one particular project on the value of one particular property is difficult to determine.⁵⁰⁴ The EIS found that although no studies related to the impacts of CO₂ pipelines on property values have been identified, there are several studies that assess the effects of natural gas pipelines and compressor stations on property values. The EIS found that while research demonstrates that property value impacts vary, studies do not conclusively establish a relationship between the presence of an underground CO₂ pipeline and the sales price or value of nearby properties. And the EIS noted that most studies indicate that the presence of an underground natural gas transmission pipeline does not affect the sales price or value of residential properties.⁵⁰⁵

442. The EIS concluded that, overall, construction and operation impacts on property values are anticipated to be minimal, lessen with distance from the pipeline, and would be similar for all three route alternatives.⁵⁰⁶ The EIS noted specifically that impacts on property values during construction would be temporary but could be significant for landowners attempting to sell their properties during construction.⁵⁰⁷ Additionally, the Sample Route Permit includes Section 7.2, which requires the Applicant to negotiate appropriate access for landowners to their property and to minimize impacts on planned future development of the property.⁵⁰⁸

8. Public Health and Safety

443. Impacts to public health and safety during normal construction and operation of a pipeline with the use of standard permit conditions and BMPs—as well compliance with federal pipeline safety regulations—are anticipated to be minimal.⁵⁰⁹

⁵⁰¹ Ex. DOC-18 at 5-39 (FEIS).

⁵⁰² Ex. DOC-18, Appendix H at Sections 7.7 and 8 (Sample Routing Permit) (FEIS).

⁵⁰³ Ex. DOC-18 at 11-6 – 11-7 (FEIS).

⁵⁰⁴ Ex. DOC-18 at 5-39 (FEIS).

⁵⁰⁵ Ex. DOC-18 at 5-41 – 5-42 (FEIS).

⁵⁰⁶ Ex. DOC-18 at 5-41 – 5-43, 11-7 (FEIS).

⁵⁰⁷ Ex. DOC-18 at 11-7 (FEIS).

⁵⁰⁸ Ex. DOC-18, Appendix H at Section 7.2 (Sample Routing Permit) (FEIS).

⁵⁰⁹ See Ex. DOC-18 at 2-5, 2-14, and 5-44 – 5-45 (FEIS).

The piping and aboveground facilities associated with the Project must be designed, constructed, operated, and maintained in accordance with the PHMSA federal safety standards in 49 CFR Part 195. The regulations are intended to ensure adequate protection for the public and to prevent accidents and failures. The Applicant has incorporated engineering and design elements into the Project to reduce the likelihood of pipeline leaks or failure, including inspection and corrosion control facilities.⁵¹⁰

444. CO₂ is a colorless, odorless, non-flammable gas that naturally occurs in the atmosphere. CO₂ is produced by human, animal, and plant metabolism and is a normal component of respiration. CO₂ is not flammable, combustible, or explosive.⁵¹¹

445. CO₂ is not toxic at low levels but can be a simple asphyxiant at higher levels. A simple asphyxiant is a gas that reduces or displaces normal levels of oxygen in breathing air. Mild CO₂ exposure could cause headache and drowsiness. At higher levels, rapid breathing, confusion, increased cardiac output, elevated blood pressure and increased arrhythmias could occur. Breathing air with high concentrations of CO₂ can lead to death by suffocation.⁵¹²

446. Because CO₂ is heavier than air, it can temporarily accumulate near the ground in low-lying outdoor areas, and in confined spaces such as caverns, tunnels, and basements until it dissipates into the atmosphere.⁵¹³ Summit used FLO2D software to use digital elevation maps across the Project footprint and highlight these low-lying areas for use in its Emergency Management Plan procedures.⁵¹⁴

447. CO₂ levels in outdoor air typically range from 300 to 400 parts per million (ppm) (0.03 to 0.04%) but can be as high as 600 to 900 ppm in urban areas. CO₂ levels directly next to an open bin of dry ice can be as high as 11,000 to 13,000 ppm.⁵¹⁵

448. The EIS provides this table of symptoms of exposure to CO₂ at different concentrations:⁵¹⁶

Concentration of CO ₂	Symptoms of Exposure
5,000 ppm (0.5%)	Occupational Safety and Health Administration permissible exposure limit and ACGIH Threshold Limit Value for 8-hour exposure—likely no effects
10,000 ppm (1.0%)	Typically no effects, possible drowsiness

⁵¹⁰ Ex. DOC-18 at 8-1 (FEIS).

⁵¹¹ Ex. DOC-18 at 8-14–15 (FEIS).

⁵¹² Ex. DOC-18 at 8-14 (FEIS).

⁵¹³ Ex. DOC-18 at 8-15 (FEIS).

⁵¹⁴ Ex. Summit-14 at 8 (Lange Direct).

⁵¹⁵ Ex. DOC-18 at 8-14 (FEIS).

⁵¹⁶ Ex. DOC-18 at table 8-3 (FEIS).

15,000 ppm (1.5%)	Mild respiratory stimulation for some people
30,000 ppm (3.0%)	Moderate respiratory stimulation; increased heart rate and blood pressure; ACGIH Threshold Limit Value-Short Term; National Institute for Occupational Safety and Health Short Term Exposure Limit, which is a 15-minute time-weighted average exposure that should not be exceeded at any time during a workday
40,000 ppm (4.0%)	Immediately dangerous to life or health
50,000 ppm (5.0%)	Strong respiratory stimulation, dizziness, confusion, headache, shortness of breath
80,000 ppm (8.0%)	Dimmed sight, sweating, tremor, unconsciousness, and possible death

449. The National Institute for Occupational Safety and Health has established that a concentration of 40,000 ppm is immediately dangerous to life and health, and that workers should not be exposed to an average concentration of 30,000 ppm for more than 15 minutes (Short Term Exposure Limit).⁵¹⁷

450. If enough oxygen is displaced by CO₂, internal combustion engines cannot operate. PHMSA's report on the 2020 Satartia incident noted that individuals on [Mississippi Highway] 433 and in the area of the migrating CO₂ vapor cloud experienced vehicle engine issues and required emergency assistance to be evacuated.⁵¹⁸

451. Both the Applicant and an independent contractor (Allied Solutions) conducted dispersion modeling to determine the extent and duration of a release of CO₂ during a potential pipeline rupture. The dispersion modeling conducted by Allied Solutions calculated the maximum distance at which CO₂ concentrations from a pipeline rupture could reach toxic levels. The impact distance at which CO₂ concentrations could reach 40,000 ppm (the immediately dangerous to life and health level) at -22°F and a humidity level of 74.3% was calculated at 617 feet, as shown in Table 4 in the Aerial and Thermal Dispersion Report in Appendix G of the FEIS. The impact distance at which CO₂ concentrations could reach 30,000 ppm (the National Institute for Occupational Safety and Health Short Term Exposure Limit, which is the maximum time-weighted average concentration to which a person could be exposed over a

⁵¹⁷ Ex. DOC-18 at 8-14 – 8-15 (FEIS).

⁵¹⁸ Ex. DOC-18 at 8-16 (FEIS).

15-minute period without injury) would be 701 feet. The impact distance at which CO₂ concentrations could reach 15,000 ppm would be 910 feet.⁵¹⁹

452. Allied Solutions conducted additional computational fluid dynamics (CFD) analyses to account for terrain changes and windbreaks along the pipeline. The CFD analysis showed that terrain along the proposed Project did not significantly affect the impact distance of a potential CO₂ rupture. However, windbreaks did significantly decrease the impact distance. The analysis also showed that the total time for release and dispersion would be less than 7 minutes in a worst-case scenario.⁵²⁰ Supplemental CFD modeling analyzing additional scenarios and using extremely conservative assumptions was conducted in response to comments on the DEIS.⁵²¹

453. In the event of a pipeline rupture, some homes along the pipeline route could experience CO₂ concentrations of 40,000 ppm.⁵²²

454. In the event of a pipeline rupture, staff and members of the public at the Fergus Falls Municipal Airport-Einar Mickelson Field could experience CO₂ concentrations of 30,000 ppm but only if they were within the unused fields at the northern edge of the airport property boundary. Given the low risk of a pipeline rupture, infrequency of air traffic, and the limited length of the pipeline near the airport, the potential for impacts on aircraft operations is very low.⁵²³

455. The Applicant would train and coordinate with emergency managers and educate the public on the dangers of a CO₂ release and what residents should do if one were to occur. The Applicant has developed a draft Emergency Response Plan that describes the actions the Applicant and local first responders would take to minimize human health and safety impacts in the event of release of CO₂ from the Project.⁵²⁴ Local first responders would receive training and equipment related to a potential release, funded by the Applicant.⁵²⁵

456. Additionally, Summit will implement comprehensive public awareness and education outreach programs, including damage prevention programs, that meet or exceed industry standards and regulatory requirements concerning public awareness of pipelines and pipeline operations. The public awareness programs are intended to inform members of the public in the vicinity of the pipeline and facilities to protect the public from injury, prevent or mitigate effects on the environment, protect the pipeline and facility assets from damage by the public, and provide ongoing public awareness.⁵²⁶

⁵¹⁹ Ex. DOC-18 at 8-16 (FEIS); *see also* Ex. DOC-18, Appendix G (FEIS).

⁵²⁰ Ex. DOC-18 at 8-17 (FEIS); *see also* Ex. DOC-18, Appendix G (FEIS).

⁵²¹ Ex. DOC-18 at 8-17 – 8-18 (FEIS); *see also* Ex. DOC-18, Appendix G (FEIS).

⁵²² Ex. DOC-18 at 8-16 (FEIS).

⁵²³ Ex. DOC-18 at 8-17 (FEIS).

⁵²⁴ Ex. DOC-18 at 8-28 (FEIS); Ex. DOC-18, Appendix N (FEIS).

⁵²⁵ Ex. DOC-18 at 5-44 and 11-7 (FEIS).

⁵²⁶ Ex. Summit-11 at 8 (Powell Direct).

457. In response to public comments, EERA staff initially recommended, and the Applicant agreed to, a special condition requiring the Applicant to provide indoor CO₂ detectors for residences within 1,000 feet of the Project.⁵²⁷ Additionally, in the FEIS, EERA staff recommended a special condition requiring the Applicant to provide outdoor CO₂ detectors for residences within 1,000 feet of the Project.⁵²⁸ However, at the evidentiary hearing EERA staff testified that EERA did not identify any particular available technology for such detectors, or the feasibility thereof, and stated that more information would be needed on the feasibility of providing indoor and outdoor CO₂ detectors before making a final recommendation that such detectors be provided.⁵²⁹ Additionally, the FEIS states, “[t]he full rupture results in impacts too quickly for an early warning device, such as an oxygen detector, to be effective.”⁵³⁰

458. EERA recommended a special condition requiring the Applicant to prepare a monitoring protocol in coordination with DNR to identify potential impacts to fish and wildlife, water resources, and other environmental resources should an accidental release (leak or rupture) of CO₂ occur.⁵³¹ However, the proposed condition is vague as to timing and the reference to “other environmental resources.”⁵³²

459. The Project is designed to capture and transport 524 MMTPA of CO₂ per day (or 0.19 MMTPA). CO₂ is a leading contributor to climate change, which has been identified by the World Health Organization as a health threat. The Project would reduce GHGs in the atmosphere and contribute to reducing the effects of climate change.⁵³³

460. The FEIS concluded that potential impacts on public health and safety are expected to be negligible to minimal, short term, and similar for all three route alternatives.⁵³⁴ As discussed at length in the FEIS, the Applicant would take measures to prevent unexpected and abnormal conditions that could result in an accidental CO₂ release, including measures that would exceed PHMSA safety standards.⁵³⁵ Additionally, the Applicant would require that all its employees and contractors complete a Human Trafficking Prevention Training prior to construction work.⁵³⁶ The Sample Route Permit also includes measures to mitigate potential impacts to public health and safety.⁵³⁷ Additionally, EERA recommended, and the Applicant agreed to, the following mitigation measures to further protect public health and safety:

- A. The Applicant will file with the Commission its Emergency Response Plan that is filed with Pipeline and Hazardous

⁵²⁷ See Ex. DOC-18 at 8-30 – 8-31 (FEIS) and Ex. Summit-11 at 7 (Powell Direct).

⁵²⁸ See Ex. DOC-18 at 8-30 – 8-31 (FEIS).

⁵²⁹ Aug. 22, 2024 Evidentiary Hearing Transcript (Evid. Hrg. Tr.) at 180 (Levi).

⁵³⁰ Ex. DOC-18 at 10 of Addendum to Appendix G (FEIS).

⁵³¹ Ex. DOC-18 at 8-31 (FEIS).

⁵³² Summit Post-Hearing Brief at 30 (September 18, 2024).

⁵³³ Ex. DOC-18 at 5-45 (FEIS).

⁵³⁴ Ex. DOC-18 at 5-44 and 11-7 (FEIS).

⁵³⁵ See Ex. DOC-18 at 5-46, 8-26 – 8-28 (FEIS).

⁵³⁶ Ex. DOC-18 at 5-46 (FEIS).

⁵³⁷ Ex. DOC-18, Appendix H at Sections 5, 6.1, 7.3, 8 (Sample Routing Permit) (FEIS).

Materials Safety Administration (PHMSA) prior to the start of operations.

- B. The Applicant will file its public education plan for Commission review 30 days prior to submittal of the Plan and Profile.
- C. The Applicant will file specified information developed in coordination with local emergency responders for Commission review 30 days prior to submittal of the Plan and Profile.

9. Public Services and Infrastructure

461. Electricity for the proposed capture facility would be provided by Lake Region Electric Cooperative.⁵³⁸ The Project's operational power needs, about 38,501,733 kWh per year, are not anticipated to require the addition of power generation capacity.⁵³⁹

462. Local roadways would experience a short-term, minimal increase in traffic during construction activities. Because the roadway network is adequate to support 200 construction vehicles, and because the Applicant proposes to cross all paved roads using HDD or boring techniques, impacts on traffic are anticipated to be minimal during construction and negligible during operation.⁵⁴⁰ Additionally, the Applicant has met with county engineers and other road authorities to discuss crossing methods, construction traffic, use and repair of roadways, and similar issues. The Applicant indicates it would develop and enter into road agreements with each county to address these issues and has proposed a number of mitigation measures to adequately avoid and/or minimize potential impacts to roadways.⁵⁴¹

463. Public services and infrastructure impacts are anticipated to be short term, negligible to minimal, and similar across the three route alternatives.⁵⁴² Additionally, the Sample Route Permit includes measures to mitigate potential impacts to public services and infrastructure.⁵⁴³

10. Recreation

464. All three route alternatives pass through primarily rural/agricultural land, avoiding proximity to most available recreational spaces.⁵⁴⁴

⁵³⁸ Ex. DOC-18 at 5-49 (FEIS).

⁵³⁹ Ex. DOC-18 at 5-54 (FEIS).

⁵⁴⁰ Ex. DOC-18 at 5-19, 5-54 – 5-55 (FEIS).

⁵⁴¹ Ex. DOC-18 at 5-56 (FEIS).

⁵⁴² See Ex. DOC-18 at 5-47 (FEIS).

⁵⁴³ Ex. DOC-18, Appendix H at Sections 7.6, 7.18, 7.22, 7.23, 8 (Sample Routing Permit) (FEIS).

⁵⁴⁴ Ex. DOC-18 at 5-58 (FEIS).

465. All three route alternatives would cross the King of Trails Scenic Byway (US Highway 75). RA-Hybrid and RA-South would cross the Otter Tail River, a state-designated water trail. The Project could temporarily impact these recreational resources during construction due to the presence of equipment in the viewshed, generation of dust, removal of vegetation in the viewshed, and increased noise. However, impacts to these resources would be minimized to the extent practicable through installation of the pipeline underneath both the Otter Trail River and the King of Trails Scenic Byway using the HDD technique, which would avoid vegetation clearing between the HDD entry and exit points. After construction, the Applicant would generally maintain the 50-foot-wide operational ROW over the pipeline by mowing and removing woody vegetation taller than 15 feet in non-cultivated areas. Exceptions include the area between HDD entry and exit points where the vegetation would not be maintained and at riparian buffers adjacent to waterbodies where only a 10-foot-wide corridor would be maintained.⁵⁴⁵

466. RA-South would pass through the Fergus Falls Fish & Game Club's Orwell property; however, the Applicant would continue to communicate with the club to minimize visual and noise impacts during construction.⁵⁴⁶

467. RA-North would not cross the Otter Tail River or the Orwell property.⁵⁴⁷

468. Overall, recreational impacts are anticipated to be short-term during construction; operation of the Project would not cause visual or noise impacts on recreational resources.⁵⁴⁸ The Applicant has committed to continuing to communicate with the Fergus Falls Fish & Game Club to minimize visual and noise impacts during construction. The Applicant also committed to the EERA staff-recommended mitigation that it provide documentation of coordination with the Fergus Falls Fish & Game Club, if issued a route permit for the Project.⁵⁴⁹ Additionally, the Sample Route Permit includes measures to mitigate potential impacts to recreation.⁵⁵⁰

469. Construction would result in a temporary increase in local population associated with the workers and associated spending from lodging, transportation, and food. The nearby cities have adequate housing and infrastructure to support the additional workers for all three route alternatives.⁵⁵¹

11. Socioeconomics

⁵⁴⁵ Ex. DOC-18 at 5-59 (FEIS).

⁵⁴⁶ Ex. DOC-18 at 5-57, 5-59 (FEIS).

⁵⁴⁷ Ex. DOC-18 at 5-57, 5-59 (FEIS).

⁵⁴⁸ Ex. DOC-18 at 5-57, 5-59 (FEIS).

⁵⁴⁹ Ex. DOC-18 at 5-60 (FEIS).

⁵⁵⁰ Ex. DOC-18, Appendix H at Sections 7.11, 7.14, 7.7, 8 (Sample Routing Permit) (FEIS).

⁵⁵¹ Ex. DOC-18 at 5-60, 11-8 (FEIS).

470. The Project will also result in benefits to the local economy through payments to landowners for operational pipeline easements as well as for use of temporary construction workspaces.⁵⁵²

471. Construction of the Project would create approximately 200 construction-related jobs. The Applicant estimates a construction employment expenditure of \$37,411,000. For the construction of the Project, 100% of the workforce would be union employees, with 50% of the personnel sourced from local union halls. However, due to the comparatively low unemployment rates in Otter Tail and Wilkin Counties, potential local labor shortages, specialized skill needs, and the relatively short construction schedule, additional labor would likely need to be sourced from other areas of the state or other states.⁵⁵³

472. The EIS found that use of local labor would increase employment in the surrounding area.⁵⁵⁴ Additionally, Local 49 and LIUNA provided comments highlighting the availability of a skilled workforce trained in proper pipeline construction techniques in the area to construct the Project and the positive benefits that wages from this Project will have on the workers, their families, and the local economy.⁵⁵⁵ As noted by Local 49, the Project's construction workforce would be 100% union labor, with most of the workers coming from the local area or within the state of Minnesota. As such, the Project "would be built safely by highly skilled construction workers and the majority of the employment benefits will return to Minnesota workers and their families."⁵⁵⁶

473. The Project would increase tax revenues, benefiting Otter Tail and Wilkin counties and the state.⁵⁵⁷ The Project will also benefit the local economy through as well as through the purchase of goods and services by the Applicant and its contractors in the counties crossed by the Project during construction and operation.⁵⁵⁸

12. Tribal Treaty Rights

474. Lands in the local vicinity of the Project were ceded to the United States government in two 1851 treaties: the Treaty with the Sioux-Sisseton and Wahpeton Bands, signed July 23, 1851, and the Treaty with the Sioux-Mdewakanton and Wahpakoota Bands, signed August 5, 1851. Neither treaty that ceded lands within the Project area established government-recognized usufructuary hunting or gathering rights within the ceded lands. Therefore, the Project is not anticipated to impact usufructuary hunting or gathering rights along any of the route alternatives.⁵⁵⁹

⁵⁵² Ex. DOC-18 at 5-62 (FEIS).

⁵⁵³ Ex. DOC-18 at 5-61 – 5-62 (FEIS).

⁵⁵⁴ Ex. DOC-18 at 5-60 (FEIS).

⁵⁵⁵ See, e.g., Local 49 Comments (Feb. 23, 2024) (eDocket No. [20242-203742-01](#)) and LIUNA Comments (Feb. 23, 2024) (eDocket No. [20242-203792-01](#)).

⁵⁵⁶ Local 49 Comments (Feb. 23, 2024) (eDocket No. [20242-203742-01](#)).

⁵⁵⁷ Ex. DOC-18 at 5-60, 11-8 (FEIS).

⁵⁵⁸ Ex. DOC-18 at 5-62 (FEIS).

⁵⁵⁹ Ex. DOC-18 at 5-63 – 5-64, 5-66 (FEIS).

13. Effects on Human Settlement: Comparison of Route Alternatives

475. RA-South, RA-North, and RA-Hybrid are anticipated to have similar impacts with respect to human settlement.

476. The record demonstrates that RA-South is designed to avoid or minimize impacts on human settlement. Further, the record demonstrates that RA-South takes into consideration comments and requests from individual landowners.⁵⁶⁰

B. Natural Environment and Natural Features

477. Minn. R. 7852.1900, subp. 3(B) requires consideration of “the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands.” Minn. R. 7852.1900, subp. 3(G) requires consideration of “natural resources and features.”

478. The EIS analyzed potential impacts to the following natural environment and natural features: air quality and GHG emissions, climate change, geology and topography, public and designated lands, rare and unique resources, soils, vegetation, water resources, wetlands, and wildlife and their habitats.⁵⁶¹

1. Air Quality, Greenhouse Gas Emissions, and Climate Change

479. Construction of the Project facilities would result in temporary and intermittent air quality and GHG impacts. However, because both Otter Tail and Wilkin Counties are designated as in attainment or unclassifiable for National Ambient Air Quality Standards (NAAQS), construction emissions are not expected to cause or significantly contribute to a violation of an applicable ambient air quality standard. Operational impacts on air quality would be minimal and would not differ depending on the route alternative.⁵⁶²

480. The Applicant has committed to a number of measures to avoid and/or minimize potential air quality impacts, including dust control measures as well as measures related to stationary source emissions.⁵⁶³

481. The Project is designed to have a normal planned capacity to capture and transport 524 metric tons per day of CO₂ (about 0.19 MMTPA assuming a 355-day operational year) generated by the ethanol plant as part of the ethanol plant’s fermentation process. While the Project reviewed in this proceeding ends at the Minnesota-North Dakota border, the pipeline itself would continue into North Dakota and interconnect with the larger MCE Project to transport the CO₂ to a sequestration area in

⁵⁶⁰ See, e.g., Ex. Summit-12 at 5 (O’Konek Direct); Evid. Hrg. Tr. at 42-43 (O’Konek).

⁵⁶¹ See Ex. DOC-18 at 5-87 – 5-166 (FEIS).

⁵⁶² Ex. DOC-18 at 5-94 – 5-96 (FEIS).

⁵⁶³ Ex. DOC-18 at 5-100 (FEIS).

North Dakota. The CO₂ transported by the Project would ultimately be injected into permanent underground sequestration facilities in North Dakota.⁵⁶⁴

482. The FEIS analyzed multiple CO₂ capture rates: 100%, 70%, 40%, and ten percent. By capturing and sequestering the CO₂ underground, and assuming a capture rate of 100% (as proposed by the Applicant), the Project would provide a net benefit to GHG emissions and lower the carbon intensity of the ethanol plant because the emissions sequestered from ongoing annual operations would outweigh the capture facility's construction and operation emissions. The FEIS concluded that there would still be a net benefit to GHG emissions for the 70 and 40% capture rates. Accordingly, the Project would reduce the carbon intensity of the ethanol produced and thereby improve the ethanol plant's ability to compete in LCFS markets.⁵⁶⁵

483. The CO₂ capture facility would capture CO₂ releases at the ethanol plant and reduce CO₂ emissions in Minnesota, which would be consistent with Minn. Stat. §§ 216H.01 and 216H.02, which require Minnesota to reduce its GHG emissions to achieve net zero by 2050.⁵⁶⁶ Additionally, the Applicant has identified monitoring, reporting, and verification requirements for its CO₂ emission reductions to comply with regulatory requirements or carbon market requirements. The Applicant would minimize the release of CO₂ during the separating process by adhering to proper operations and routine maintenance of the equipment at the capture facility.⁵⁶⁷

484. The Project would capture and sequester the CO₂ emissions from the ethanol plant underground, which would contribute to a beneficial impact on climate change.⁵⁶⁸

485. The Applicant has stated that it does not propose or plan to use CO₂ transported by the Project for enhanced oil recovery.⁵⁶⁹ There is no evidence in the record that the CO₂ transported by the Project will be used for enhanced oil recovery.⁵⁷⁰

2. Geology and Topography

486. Construction of the pipeline and capture facility would result in minimal and temporary impacts on topography due to grading and excavation operations. After pipeline installation, the applicant would backfill trenches with native material, respread topsoil, and restore the surface topography to pre-construction conditions. Once the construction of the capture facility is complete, the surface topography at the capture

⁵⁶⁴ Ex. DOC-18 at 5-98 – 5-99 (FEIS).

⁵⁶⁵ Ex. DOC-18 at 5-98 – 5-99 (FEIS).

⁵⁶⁶ Ex. DOC-18 at 5-99 (FEIS).

⁵⁶⁷ Ex. DOC-18 at 5-100 (FEIS).

⁵⁶⁸ Ex. DOC-18 at 5-105 (FEIS).

⁵⁶⁹ Ex. DOC-18 at 5-106 (FEIS).

⁵⁷⁰ See, e.g., Evid. Hrg. Tr. at 89 – 90, 98 (Powell); August 21, 2024 WebEx Public Hearing Transcript (Aug. 21, 2024 Pub. Hrg. Tr.) at 30; Aug. 20, 2024 Pub. Hrg. Tr.) at 60 (Petersen).

facility would be returned to pre-construction conditions, except where facilities have been constructed.⁵⁷¹

487. Given the depth of the excavations (approximately six feet deep for the pipeline trench and approximately five to six feet deep for footings at the capture facility) compared to the depth of bedrock in the Project area, there is a low likelihood that the Project would cause impacts on bedrock geology.⁵⁷²

488. The potential risk to the pipeline from geologic hazards, such as earthquakes and landslides, is low because of the relatively flat terrain and low levels of earthquake occurrence in the Project area.⁵⁷³

489. The Applicant has completed geotechnical evaluations for HDD crossings on RA-South at two of the three planned HDD crossings (the Otter Tail River and the Bois de Sioux River), and plans to conduct a geotechnical evaluation at the third (Pelican River) once permission is obtained. Based on the results of the geotechnical evaluations and soil profiles encountered to-date, soils in the area are suitable for HDDs.⁵⁷⁴ The Applicant would develop a contingency plan to address the unintended release of drilling mud to the environment during the execution of each HDD. It would also include contingencies in the event the HDD cannot be completed as planned.⁵⁷⁵

490. The Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts related to geology and topography. For example, the Applicant would consult with geotechnical engineers across the Project footprint and develop a Phase I Geohazard Assessment for the Project. Depending on the results of the Phase I assessment, Phase II and Phase III assessments would be conducted as needed. The assessments would identify best management practices during pipeline construction and operation to avoid, mitigate, and/or monitor possible geohazards. Additionally, in accordance with EERA recommendations, the Applicant would provide the results of the Phase I Geohazard Assessment and any subsequent Phase II and Phase III assessments to the Commission as a pre-construction filing.⁵⁷⁶

3. Public and Designated Lands

491. All three route alternatives would cross or abut Waterfowl Production Area (WPA) parcels managed by the U.S. Fish and Wildlife Service (USFWS) in Otter Tail County. All three route alternatives would cross one WPA parcel at MP 0.3, near the ethanol plant where the three route alternatives follow the same route. The Applicant stated that USFWS staff confirmed the conservation easement is limited to the wetlands on the parcel, and all three route alternatives would avoid all wetland impacts on the

⁵⁷¹ Ex. DOC-18 at 5-110 – 5-111 (FEIS).

⁵⁷² Ex. DOC-18 at 5-110 (FEIS).

⁵⁷³ Ex. DOC-18 at 5-110 (FEIS).

⁵⁷⁴ Ex. DOC-18 at 5-110 (FEIS).

⁵⁷⁵ Ex. DOC-18 at 5-111 (FEIS).

⁵⁷⁶ Ex. DOC-18 at 5-111 (FEIS).

parcel. The Applicant committed to avoiding the wetlands within the WPA parcel at MP 0.3.⁵⁷⁷

492. The route widths of RA-North and RA-Hybrid abut, but do not cross, another WPA.⁵⁷⁸

493. Four other WPA parcels, including portions of the Ridgeway WPA, are within the route width for RA-South. These areas would be avoided during construction. The parcels would not be impacted by the applicant's proposed construction workspace.⁵⁷⁹

494. No other DNR lands, wilderness areas, or federal lands occur within the route widths for the three route alternatives.⁵⁸⁰

495. The record demonstrates that the Project has been designed to avoid and/or minimize impacts to public and designated lands. For example, the Applicant committed to avoiding the wetlands within the WPA parcel at MP 0.3.⁵⁸¹

4. Rare and Unique Resources

496. The USFWS's Information for Planning and Consultation (IPaC) was accessed for information on the documented presence of federally listed species within one mile of the route widths for the route alternatives.⁵⁸²

497. USFWS recommended field surveys along the RA-South route for four federally listed species. The four species, two butterflies and two vascular plants, are also state-listed species in Minnesota. The federal/state-listed species targeted for field surveys conducted by the Applicant were: Dakota skipper (federally threatened, state endangered); Poweshiek skipperling (federally and state endangered); Prairie bush clover (federally and state threatened); and Western prairie fringed-orchid (federally threatened, state endangered). The field surveys also assessed habitat for the butterfly species.⁵⁸³

498. Summit has conducted all requested surveys for state-listed species along RA-South and has coordinated with the DNR on survey efforts. To date, surveys have not identified concerns for impacts to state-listed species.⁵⁸⁴

499. Data from the DNR's Natural Heritage Information System (NHIS) database was obtained for RA-South. EERA staff also obtained Conservation Planning

⁵⁷⁷ Ex. DOC-18 at 5-111 – 5-112 (FEIS).

⁵⁷⁸ Ex. DOC-18 at 5-111 – 5-112 (FEIS).

⁵⁷⁹ Ex. DOC-18 at 5-111 – 5-112 (FEIS).

⁵⁸⁰ Ex. DOC-18 at 5-112 (FEIS).

⁵⁸¹ Ex. DOC-18 at 5-111 – 5-112 (FEIS).

⁵⁸² Ex. DOC-18 at 5-113 (FEIS).

⁵⁸³ Ex. DOC-18 at 5-114 (FEIS).

⁵⁸⁴ Ex. Summit-13 at 11 (Zoller Direct).

Reports for RA-North and RA-Hybrid routes. These reviews confirmed the absence of known northern long-eared bat hibernacula within 0.25 mile and the absence of known roost trees within 150 feet of the three route alternatives.⁵⁸⁵

500. Three federally listed species occur within one mile of the route width of RA-North: Northern long-eared bat (endangered); Tricolored bat (proposed endangered); and Monarch butterfly (candidate species). No federally designated critical habitat has been identified in the RA-North route segment. In addition to species protected under the Endangered Species Act, bald eagles and golden eagles are known to occur within one mile of the route width of RA-North. Bald and golden eagles are protected under the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act (MBTA). Aerial nest surveys for bald and golden eagles have not been conducted along RA-North.⁵⁸⁶ Nine state-listed species occur within one mile of the route width of RA-North.⁵⁸⁷

501. Five federally listed species occur within one mile of the route width of RA-Hybrid: Northern long-eared bat (endangered); Tricolored bat (proposed endangered); Dakota skipper (threatened); Monarch butterfly (candidate species); and Western prairie fringed orchid (threatened). No federal critical habitats have been identified within one mile of the route width of RA-Hybrid. Aerial bald and golden eagle nest surveys have not been conducted along the portions of RA-Hybrid that are not the same as RA-South.⁵⁸⁸ Ten state-listed species occur within one mile of the route width of RA-Hybrid.⁵⁸⁹

502. Five federally listed species occur within one mile of the route width of RA-South: Northern long-eared bat (endangered); Tricolored bat (proposed endangered); Dakota skipper (threatened); Monarch butterfly (candidate species); and Western prairie fringed orchid (threatened). No federal critical habitats have been identified within one mile of the route width of RA-South. Field surveys conducted between May 31 and June 15, 2022, found suitable habitat for Dakota skipper and Poweshiek skipperling, although, neither the USFWS IPaC nor the DNR NHIS review identified any known locations of Poweshiek skipperling along RA-South. The field surveys found no federally listed plant species. However, suitable habitat rated as fair to poor quality for western prairie fringed-orchid was identified in one location. At that same location, the field surveys identified 17 individuals of small white lady's-slipper (the state special concern species). Aerial nest surveys for bald and golden eagles were performed along the RA-South route in March 2022 and identified two active bald eagle nests. Both nests were outside of the disturbance buffer of 660 feet, as specified by

⁵⁸⁵ Ex. DOC-18 at 5-114 (FEIS).

⁵⁸⁶ Ex. DOC-18 at 5-115 (FEIS).

⁵⁸⁷ Ex. DOC-18 at 5-116 (FEIS).

⁵⁸⁸ Ex. DOC-18 at 5-115 (FEIS).

⁵⁸⁹ Ex. DOC-18 at 5-116 – 5-117 (FEIS).

USFWS.⁵⁹⁰ Five state-listed species occur within one mile of the route width of RA-South.⁵⁹¹

503. The FEIS concluded that Project activities within the route alternatives would not have a significant direct impact on federally listed species. There would be no direct impact on the endangered northern long-eared bat or the proposed endangered tricolored bat. There would be no removal of western prairie fringed orchid and no anticipated take of federally threatened Dakota skipper.⁵⁹²

504. Summit has conducted surveys for state-listed species and has coordinated with the DNR on survey efforts. To date, surveys have not identified concerns for impacts to state-listed species.⁵⁹³

505. There would be no physical removal, and therefore no direct take, of state-listed mussel species. This is because rivers and streams that provide suitable habitat for state-listed mussels would be crossed using HDD techniques, passing under the riverbed habitats of state-listed mussels species.⁵⁹⁴

506. RA-North crosses the Foxhome Prairie Minnesota Biological Survey (MBS) site, which has a biodiversity rank of “High.” In accordance with DNR’s recommendation, if RA-North is selected and if the selected route alignment is near the Foxhome Prairie High Biodiversity MBS site, the Applicant would evaluate resources along the route and coordinate with DNR to avoid impacts on this resource. RA-South does not cross this MBS site, so RA-South would not impact this site.⁵⁹⁵

507. The record demonstrates that the Applicant has designed the Project to avoid and/or minimize impacts to rare and unique resources. For example, the Applicant has committed to a number of mitigation measures for rare and unique resources, such as pre-construction surveys and marking areas with rare and unique resources, reduction of construction workspace in proximity of rare and unique resources as needed to avoid potential impacts, and use of wildlife-friendly erosion and sediment control BMPs.⁵⁹⁶ Additionally, Summit intends to follow USFWS guidance regarding compliance with the MBTA and will continue to consult with the USFWS regarding MBTA. Summit is developing an MBTA plan for use during construction and operations.⁵⁹⁷ Additionally, the Sample Route Permit contains a number of measures that would reduce impacts on rare and unique resources.⁵⁹⁸

⁵⁹⁰ Ex. DOC-18 at 5-115 (FEIS).

⁵⁹¹ Ex. DOC-18 at 5-117 (FEIS).

⁵⁹² Ex. DOC-18 at 5-119 – 5-120 (FEIS).

⁵⁹³ Ex. Summit-13 at 11 (Zoller Direct).

⁵⁹⁴ Ex. DOC-18 at 5-121 (FEIS).

⁵⁹⁵ Ex. DOC-18 at 5-117 – 5-118, 5-122 (FEIS).

⁵⁹⁶ See Ex. DOC-18 at 5-122 – 5-123 (FEIS) and Ex. Summit-13 at 13 (Zoller Direct).

⁵⁹⁷ Ex. Summit-13 at 10 (Zoller Direct).

⁵⁹⁸ Ex. DOC-18, Appendix H at Sections 7.11, 7.12, 7.16, 7.17, 7.24, 8 (Sample Routing Permit) (FEIS).

5. Soils

508. Soil characteristics within the construction workspace along RA-North, RA-Hybrid, and RA-South were analyzed from U.S. Department of Agriculture (USDA) Natural Resources Conservation Service soils data. Soils in the eastern portion of the Project area generally consist of well drained to very poorly drained coarse-loamy till to clayey till. Soils in the western portion of the Project area generally consist of somewhat poorly drained to very poorly drained loams and clays. The route alternatives generally share similar soil characteristics.⁵⁹⁹

509. Due to the presence of some corrosive soil types in parts of the Red River Valley, to protect against corrosion, the Applicant would apply an external fusion-bonded epoxy coating to the pipeline and install a cathodic protection system and electrical mitigation along the pipeline.⁶⁰⁰

510. During construction, vegetation clearing, topsoil removal, and trenching would expose soils and increase the potential for erosion, compaction, and mixing of topsoil with subsoil. However, the Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to soil. For example, to minimize soil compaction and rutting, the Applicant would suspend certain construction activities on susceptible soils during wet conditions if the topsoil has not been stripped or use low ground weight equipment. Additionally, the Applicant has developed a Minnesota ECP and Minnesota APP that include a number of construction practices and BMPs to minimize potential impacts to soil, including detailed plans for saving and segregating topsoil and subsoil during construction.⁶⁰¹

511. Based on the Applicant's proposed schedule, the Project would not be constructed during winter conditions. If winter construction were to occur, the Applicant would implement its Winter Construction Plan, which includes measures for handling frozen soils during construction.⁶⁰²

512. The FEIS concluded that operation of the Project would result in negligible impacts to soil. Temporarily disturbed areas would be allowed to revert to prior use in most instances, and no soil disturbance would occur over the pipeline, except for periodic maintenance activities, which would be limited in scope and short in duration.⁶⁰³

513. The record demonstrates that the Project has been designed and will be constructed and operated to minimize potential impacts to soil. For example, the Applicant will obtain a National Pollutant Discharge Elimination System (NPDES)

⁵⁹⁹ Ex. DOC-18 at 5-124 – 5-125 (FEIS).

⁶⁰⁰ Ex. DOC-18 at 5-128 (FEIS).

⁶⁰¹ Ex. DOC-18 at 5-126 – 5-127, 5-128 – 5-129 (FEIS), Ex. DOC-18, Appendix D (Minnesota ECP) (FEIS), and Ex. DOC-18, Appendix E (Minnesota APP) (FEIS).

⁶⁰² Ex. DOC-18 at 5-128 (FEIS).

⁶⁰³ Ex. DOC-18 at 5-128 (FEIS).

General Construction Stormwater Coverage Permit prior to construction, which will include approved measures to manage soil erosion and minimize soil compaction. In addition, the Applicant has proposed a number of additional mitigation measures to avoid and/or minimize potential impacts to soil, including: stabilizing areas of exposed soils when construction activities are complete or have temporarily ceased and would not resume within 14 days, and reseeding non-agricultural areas with native seed mixes approved by the Board of Water and Soil Resources (BWSR); conducting appropriate geohazard assessment(s); and running an inertial measurement unit (IMU) smart tool as part of the baseline assessment after construction.⁶⁰⁴ Additionally, in accordance with EERA recommendations, the Applicant would provide the results of the Phase I Geohazard Assessment and any subsequent Phase II and Phase III assessments to the Commission as a pre-construction filing.⁶⁰⁵ Additionally, the Sample Route Permit includes measures to mitigate potential impacts to soils.⁶⁰⁶

6. Vegetation

514. Overall, there is minor variation in land cover types among the three route alternatives. Land cover along the three route alternatives is predominantly agricultural, with smaller areas of development, forest, open land (bare rocky ground and grass), open water, and wetlands distributed along each of the route alternatives.⁶⁰⁷

515. Impacts to vegetation would result almost entirely from removal and crushing during construction. Indirect impacts include possible introduction of invasive species.⁶⁰⁸

516. Impacts on agricultural vegetation would be similar for the RA-South and RA-Hybrid alternates. RA-North would have fewer impacts on agricultural vegetation than the other two route alternatives. Impacts on vegetation in developed areas would be relatively higher in RA-North than in RA-South or RA-Hybrid.⁶⁰⁹

517. Overall, impacts to vegetation from construction activities are expected to be short term and minimal for all route alternatives, and operational impacts on vegetation due to routine maintenance for the continued safety and operation of the pipeline would be long term and minimal.⁶¹⁰

518. The record demonstrates that the Project has been designed to minimize potential impacts to vegetation. The Applicant has developed a Minnesota ECP and Minnesota APP that detail specific measures to avoid and minimize impacts on

⁶⁰⁴ Ex. DOC-18 at 5-129 (FEIS).

⁶⁰⁵ Ex. DOC-18 at 5-111 (FEIS).

⁶⁰⁶ Ex. DOC-18, Appendix H at Sections 7.8, 7.9, 7.10, 7.13, 8 (Sample Routing Permit) (FEIS).

⁶⁰⁷ Ex. DOC-18 at 5-131 (FEIS).

⁶⁰⁸ Ex. DOC-18 at 5-131 (FEIS).

⁶⁰⁹ Ex. DOC-18 at 5-131 (FEIS).

⁶¹⁰ Ex. DOC-18 at 5-133 – 5-134 (FEIS).

vegetation.⁶¹¹ Additionally, to reduce the potential for introduction of non-native species on exposed soils, all areas of exposed soils would be stabilized when construction activities are complete or have temporarily ceased and would not resume within 14 days. Non-agricultural areas would be reseeded with BWSR-approved, weed-free native seed.⁶¹² The Applicant has also committed to working with local weed management boards and landowners to determine locations of state-identified noxious or invasive species.⁶¹³ Additionally, as recommended by DNR, Summit will prepare a VMP in consultation with the VMWG prior to the start of construction of the Project.⁶¹⁴ Further, the Sample Route Permit includes measures to mitigate potential impacts to vegetation.⁶¹⁵

7. Water Resources

519. The pipeline would be installed at waterbodies crossed by the Project using nonflowing open cut, isolated dry-trench, or trenchless construction methods including HDD and conventional bore. The pipeline would be installed deep enough to prevent pipe exposure over time.⁶¹⁶

520. RA-North would cross 17 intermittent waterbodies, RA-Hybrid would cross 26 intermittent waterbodies, and RA-South would cross 25 intermittent waterbodies.⁶¹⁷ All perennial streams would be crossed by HDD or bore, as shown in Tables 5-48 through 5-50 of the FEIS.⁶¹⁸ The widest waterbodies that would be crossed are the Bois de Sioux River (crossed by RA-Hybrid and RA-South), Red River (crossed by RA-North), Otter Tail River (crossed by RA-Hybrid and RA-South), and Pelican River (RA-North, RA-Hybrid, and RA-South), all of which are impaired waters. Each of these rivers would be crossed by HDD.⁶¹⁹

521. Impacts on surface water may occur during construction activities, but would be minimal and short term, occurring only during construction. These include clearing and grading of stream banks, topsoil disturbance, in-stream trenching, trench dewatering, backfilling, and expansion of access roads. These activities can increase sedimentation and erosion, modify hydrological flow, release chemical and nutrient pollutants from sediments, and introduce chemical contaminants such as fuel and lubricants.⁶²⁰

⁶¹¹ Ex. DOC-18 at 5-132 (FEIS), Ex. DOC-18, Appendix D (Minnesota ECP) (FEIS), and Ex. DOC-18, Appendix E (Minnesota APP) (FEIS).

⁶¹² Ex. DOC-18 at 5-133 (FEIS).

⁶¹³ Ex. DOC-18 at 5-135 (FEIS).

⁶¹⁴ Ex. DOC-18 at 5-135 (FEIS) and Ex. Summit-13 at 12 (Zoller Direct).

⁶¹⁵ Ex. DOC-18, Appendix H at Sections 7.8, 7.11, 7.14, 7.15, 7.16, 7.17, 8 (Sample Routing Permit) (FEIS).

⁶¹⁶ Ex. DOC-18 at 5-145 (FEIS).

⁶¹⁷ Ex. DOC-18 at 5-145 (FEIS).

⁶¹⁸ Ex. DOC-18 at 5-105, 5-137 – 5-143 (FEIS).

⁶¹⁹ Ex. DOC-18 at 5-143 (FEIS).

⁶²⁰ Ex. DOC-18 at 5-145 (FEIS).

522. As demonstrated by the record, Summit has and continues to diligently analyze and determine the most appropriate crossing method for wetlands and waterbodies in coordination with the agencies, including DNR.⁶²¹

523. In accordance with DNR's recommendation, the Applicant will conduct unintentional release evaluations to ensure soils are amenable for each HDD crossing. Summit's contractor will develop an HDD contingency plan to address unintended return or release of drilling fluids. Containment, response, and clean-up equipment would be available at both sides of an HDD crossing location and one side of a bore prior to commencement to assure a timely response in the event of an inadvertent release of drilling fluid.⁶²²

524. The record demonstrates that the Project has been designed to minimize potential impacts to surface waters. The Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to surface waters, including those outlined in the Minnesota ECP.⁶²³ Additionally, the Applicant would mitigate impacts on the large perennial rivers (the Pelican River, the Otter Tail River, and the Bois de Sioux River [or Red River for RA-North]) and adjacent riparian areas by installing the pipeline using HDD methods.⁶²⁴ The Applicant also committed to a number of additional mitigation measures based on comments from DNR, as noted in the FEIS.⁶²⁵ Further, the Sample Route Permit includes measures to mitigate potential impacts to surface waters.⁶²⁶

525. Unconsolidated permeable glacial deposits and recent alluvial deposits are the most important groundwater sources in the Project area. These deposits consist primarily of glacial sand and/or gravel outwash, ice-contact deposits, or sand and gravel alluvium that was deposited along existing streams. Glacial aquifers are classified as surficial aquifers when the water table is in these deposits.⁶²⁷

526. All three route alternatives cross a surficial beach ridge aquifer in Otter Tail County. DNR stated that the area is prone to significant groundwater discharge and an initial groundwater investigation by the Applicant along RA-South confirmed that artesian groundwater conditions are present within the beach ridge system. Groundwater investigations have not been conducted along RA-North and RA-Hybrid. However, MDH reports that, based on well records in its County Well Index, artesian conditions are present in shallow confined aquifers within one mile of each route alternative.⁶²⁸ DNR confirmed the presence of shallow confined aquifers along all three

⁶²¹ See Ex. Summit-13 at 14-16 (Zoller Direct), Ex. DOC-18 at 5-145 – 5-146 (FEIS), and Ex. Summit-1, Appendix 10 (Wetland Crossing Table) (Application).

⁶²² Ex. Summit-13 at 16 (Zoller Direct) and Ex. DOC-18 at 5-146, 5-151 – 5-152 (FEIS).

⁶²³ Ex. DOC-18 at 5-145 – 5-146 and Appendix D at 18 (Minnesota ECP) (FEIS).

⁶²⁴ Ex. DOC-18 at 5-151 (FEIS).

⁶²⁵ Ex. DOC-18 at 5-150 - 5-151 (FEIS).

⁶²⁶ Ex. DOC-18, Appendix H at Sections 7.13, 8 (Sample Routing Permit) (FEIS).

⁶²⁷ Ex. DOC-18 at 5-143 (FEIS).

⁶²⁸ Ex. DOC-18 at 5-143 (FEIS); see *also* Evid. Hrg. Tr. at 154-155, 173 (Levi).

route alternatives.⁶²⁹ Additionally, EERA staff concluded that because the composition of the soil and the water in the areas along all three route alternatives are similar, the FEIS had sufficient information to conclude that construction activities along all three route alternatives would have only temporary, minimal, and localized impacts on groundwater and potential impacts would be similar for all routes.⁶³⁰

527. To minimize the likelihood that construction activities will impact the beach ridge area, Summit has committed to not using sheet piling within the beach ridge area. Should trench wall stability be a concern, Summit will use trench boxes to stabilize the trench walls, which will not result in any additional excavation. If the HDD method is used inside the beach ridge area, the pipeline will be installed to a depth of six to ten feet. A shallow bore installed to a depth of six to ten feet will minimize the likelihood of intersecting groundwater. In accordance with EERA and DNR recommendations, the Applicant is coordinating with DNR on a groundwater investigation in the beach ridge system area along RA-South to define existing conditions and inform construction practices in this area.⁶³¹ At any locations where sheet piling may be used outside of the beach ridge area, the Applicant has committed to conducting geotechnical and groundwater evaluations of the area.⁶³²

528. The Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to groundwater. For example, the Applicant proposes to install trench breakers at the entry and exit from every public water crossing, except for at HDD crossings. In addition, as outlined in Section 5.5 of the Minnesota ECP, trench breakers will be installed at wetland boundaries where the pipeline trench may cause a wetland to drain, or the trench bottom will be sealed to maintain wetland hydrology. The Applicant has and continues to diligently analyze and determine the most appropriate locations for trench breakers across the Project based on a variety of factors. The Applicant's trench breaker plans account for the substantial body of knowledge that its construction staff has regarding the placement of trench breakers as well as accounting for local, site-specific knowledge to use trench breakers most effectively. While the Applicant does not intend to specifically implement the Pennsylvania standards, the Applicant's plans will achieve the same or greater levels of protection, which is consistent with the Pennsylvania standards regarding the use of alternate best management practices. Accordingly, DNR's recommendation that the Pennsylvania standards for trench breaker placement be used and trench breakers be used at the entrance and exit of every waterbody regardless of slope (except for HDD crossings) is not recommended.⁶³³

⁶²⁹ Evid. Hrg. Tr. at 154-155, 173-174 (Levi).

⁶³⁰ See Ex. DOC-18 at 5-135, 5-147 (FEIS) and Evid. Hrg. Tr. at 173-174 (Levi).

⁶³¹ See Ex. DOC-18 at 5-147 – 5-148, 5-152 (FEIS), Ex. Summit-26 at 2 (O'Konek Surrebuttal), and Evid. Hrg. Tr. at 37-38 (Zoller).

⁶³² Ex. DOC-18 at 5-147 – 5-148, 5-152 (FEIS) and Evid. Hrg. Tr. at 37-38 (Zoller).

⁶³³ See Ex. Summit-12 at 10-11 (O'Konek Direct) and Ex. DOC-18 at 5-147, 5-151 (FEIS).

529. Ground disturbance or excavation associated with installation of a 4-inch-diameter pipeline is not expected to significantly affect groundwater resources.⁶³⁴ Additionally, the record demonstrates that the Project has been designed to minimize potential impacts to groundwater. The Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to groundwater, including those outlined in the Minnesota ECP.⁶³⁵ The Applicant also committed to a number of additional mitigation measures based on comments from DNR, as noted in the FEIS.⁶³⁶ Further, the Sample Route Permit includes measures to mitigate potential impacts to groundwater.⁶³⁷

530. During pipeline construction, installation of HDDs, hydrostatic testing, and dust control could involve appropriations from surface water or groundwater sources, if permitted by the DNR. The Applicant estimates about 125,000 gallons of water would be needed for construction of the pipeline, of which 110,000 gallons would be used for hydrostatic testing. Trench dewatering is regulated by DNR and would be conducted according to permit requirements.⁶³⁸ Summit's water use would comply with all applicable requirements and standards.⁶³⁹

531. Summit is evaluating the need to appropriate water for dewatering, dust control, and hydrostatic testing during construction of the capture facility. A specific water source has not been determined at this time; however, Summit plans to obtain water for hydrostatic testing and dust control during construction of the capture facility from either a local surface water source or groundwater well directly or indirectly from the ethanol plant or the city of Fergus Falls. The amount of water needed for capture facility construction has not yet been determined.⁶⁴⁰

532. Water would not be needed for operation of the pipeline.⁶⁴¹

533. The Applicant estimates that the capture facility would require an average water usage of about 13 million gallons per year. Water for operation of the capture facility is expected to be obtained from an existing, on-site commercial well at the ethanol plant; however, the Applicant has not yet finalized plans with the ethanol plant for use of this well. The ethanol plant withdrew 174 million gallons from its well in 2022, so the capture facility use would represent only about a seven percent increase in water withdrawal.⁶⁴² Summit will obtain the appropriate permits for water to be used during operations. The permitting process will ensure that water appropriations would not

⁶³⁴ Ex. DOC-18 at 5-147 (FEIS).

⁶³⁵ Ex. DOC-18 at 5-147 and Appendix D at 7 (Minnesota ECP) (FEIS).

⁶³⁶ Ex. DOC-18 at 5-150 - 5-152 (FEIS).

⁶³⁷ Ex. DOC-18, Appendix H at Sections 7.13, 8 (Sample Routing Permit) (FEIS).

⁶³⁸ Ex. DOC-18 at 5-148 (FEIS).

⁶³⁹ Ex. Summit-13 at 15 (Zoller Direct).

⁶⁴⁰ Ex. DOC-18 at 5-148 – 5-149 (FEIS).

⁶⁴¹ Ex. DOC-18 at 5-149 (FEIS).

⁶⁴² Ex. DOC-18 at 5-149 (FEIS).

deplete or degrade the water source as the permit would specify maximum water withdrawal rates.⁶⁴³

534. Due to the volume of current DNR-permitted water appropriations in the counties crossed by the Project, the relatively small volume of water likely needed by the Project in comparison, and the measures and conditions outlined in Summit's testimony and the FEIS, environmental effects from the Project's water appropriation activities are expected to be minimal.⁶⁴⁴

535. None of the route alternatives would cross Federal Emergency Management Agency (FEMA)-mapped floodplains in Otter Tail County. All three route alternatives cross FEMA-mapped floodplains in Wilkin County.⁶⁴⁵

536. Following construction, the integrity of the pipeline is not expected to be impacted in flood prone areas because the pipeline would be below-ground and would not be impacted by flooding. All perennial streams would be crossed by HDD or bore, as shown in Tables 5-48 through 5-50 of the FEIS. Other streams that would be crossed are intermittent or ephemeral streams, many of which are drainage ditches, and they would not be at significant risk of flooding-related problems like scour. Any MLVs located in floodplains would be constructed in accordance with floodplain permitting requirements. Due to the small footprint (less than 0.1 acre), negligible impacts on the floodplain and floodplain elevations would be anticipated.⁶⁴⁶ Accordingly, the record demonstrates that floodplain impacts would be short term and negligible during construction for all three route alternatives. The Applicant would coordinate with Wilkin County to secure a floodplain permit for the portions of the Project that would be constructed within designated floodplains, as needed.⁶⁴⁷

8. Wetlands

537. The FEIS analyzed wetlands along the three route alternatives using National Wetlands Inventory (NWI) data. The Applicant has conducted wetland delineations along RA-South.⁶⁴⁸ RA-South's route width contains 44.6 acres of wetlands. RA-Hybrid's route width contains 24.7 acres of wetlands. RA-North's route width contains 20.9 acres of wetlands.⁶⁴⁹ As the FEIS noted, the number of wetland acres within the route width is much higher for RA-South because the route width for this alternative is increased in one area (to 1,808 feet from MP 6.4 to MP 7.1) to allow for additional study and the potential need to make modifications to the alignment, while a similar increase was not included for RA-Hybrid and RA-North.⁶⁵⁰

⁶⁴³ See Ex. DOC-18 at 5-149 (FEIS); Ex. Summit-13 at 7 (Zoller Direct).

⁶⁴⁴ See Ex. DOC-18 at 5-149 (FEIS); Ex. Summit-13 at 8 (Zoller Direct).

⁶⁴⁵ Ex. DOC-18 at 5-145 (FEIS).

⁶⁴⁶ Ex. DOC-18 at 5-105 (FEIS).

⁶⁴⁷ Ex. DOC-18 at 5-150 (FEIS).

⁶⁴⁸ Ex. DOC-18 at 5-153 (FEIS).

⁶⁴⁹ Ex. DOC-18 at 5-153 – 5-154 (FEIS).

⁶⁵⁰ Ex. DOC-18 at 5-154 (FEIS).

538. The acreage of wetlands that would be within the construction ROW is relatively small for all three route alternatives.⁶⁵¹

539. Direct wetland impacts would occur within the construction ROW during pipeline construction. Impacts would be minimal and short term in emergent wetlands, and minimal to moderate and long term in forested wetlands. Overall, wetland impacts would be similar among the three route alternatives.⁶⁵²

540. The record demonstrates that the Project has been designed to minimize potential impacts to wetlands. Wetland impacts would be minimized through implementation of standard BMPs and conditions required under the state and federal permits for work in wetlands.⁶⁵³ Additionally, the Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to wetlands, including those outlined in the Minnesota ECP.⁶⁵⁴ For example, Summit is reducing the width of temporary workspace required for the crossing of wetlands from 50 feet to 25 feet to minimize the temporary impacts. ATWS will be sited outside of wetlands to the extent practicable.⁶⁵⁵ Further, the Sample Route Permit includes measures to mitigate potential impacts to wetlands.⁶⁵⁶

9. Wildlife and Habitats

541. Wildlife that could occur in the route widths for all three route alternatives are common generalist species associated with disturbed habitats and are accustomed to human activities occurring in the area.⁶⁵⁷

542. Habitats in the local vicinity consist of open land, wood land, and wetland habitats. Open land habitat consists of cropland, pasture, meadows, and areas that contain grasses, herbs, shrubs, and vines. Woodland habitat consists of areas of deciduous plants, coniferous plants, or both and associated grasses, legumes, and wild herbaceous plants. Wetland habitat wildlife consists of open, marshy, or swampy shallow water areas.⁶⁵⁸ Aquatic habitat consists of perennial or intermittent rivers and streams crossed by the route alternatives.⁶⁵⁹

543. Habitat quality along the route widths for all three route alternatives is relatively low overall, and those areas of higher habitat quality comprise less than five percent of the construction workspace and less than four percent of the operational right-of-way for any of the route alternatives. Additionally, construction and operation of the Project facilities would occur in developed areas or in agricultural areas, where

⁶⁵¹ Ex. DOC-18 at 5-154 – 5-156 (FEIS).

⁶⁵² Ex. DOC-18 at 5-152, 5-154 – 5-156 (FEIS).

⁶⁵³ Ex. DOC-18 at 5-155 – 5-156 (FEIS).

⁶⁵⁴ See, e.g., Ex. DOC-18 at 5-158 – 5-159 and Appendix D at 15-17 (Minnesota ECP) (FEIS).

⁶⁵⁵ Ex. Summit-13 at 14 (Zoller Direct).

⁶⁵⁶ Ex. DOC-18, Appendix H at Sections 7.13, 8 (Sample Routing Permit) (FEIS).

⁶⁵⁷ Ex. DOC-18 at 5-159 (FEIS).

⁶⁵⁸ Ex. DOC-18 at 5-162 (FEIS).

⁶⁵⁹ Ex. DOC-18 at 5-159 (FEIS).

wildlife habitat is generally limited. Accordingly, the FEIS concluded that construction of the pipeline along any of the three route alternatives would not significantly diminish wildlife habitat quality or availability.⁶⁶⁰

544. Impacts to general wildlife species and wildlife habitat are anticipated to be minimal. All three route alternatives will have similar impacts to wildlife resources. Most impacts will be temporary and minimal. Short-term, direct impacts will include temporary displacement or disturbance during construction and temporary loss or alteration of habitat. Habitat loss or degradation would be minimal, as most of the route width for all three route alternatives is agricultural land.⁶⁶¹

545. The record demonstrates that the Project has been designed to minimize potential impacts to wildlife and habitats. The Applicant has proposed a number of mitigation measures to avoid and/or minimize potential impacts to wildlife and habitats, including those outlined in the Minnesota ECP.⁶⁶² For example, the Applicant would use wildlife-friendly erosion and sediment control BMPs that contain biodegradable netting with natural fibers and would avoid the use of plastic mesh to minimize impacts on wildlife. Additionally, the Applicant will avoid and/or minimize potential impacts on aquatic resources by implementing appropriate waterbody crossing BMPs and selecting a crossing technique that is most appropriate for each waterbody, after consultation with DNR for public waters.⁶⁶³ Further, the Sample Route Permit includes measures to mitigate potential impacts to wildlife and habitats.⁶⁶⁴

10. Effects on Natural Environment and Natural Features: Comparison of Route Alternatives

546. RA-South, RA-North, and RA-Hybrid are anticipated to have similar impacts with respect to the natural environment and natural features.

547. The record demonstrates that RA-South is designed to avoid or minimize impacts on the natural environment and natural features. To-date, Summit has completed biological surveys for 98.4% of RA-South.⁶⁶⁵ Additionally, Summit has developed or will develop several plans to minimize and/or mitigate the potential impacts of Project construction, such as the Minnesota ECP, Minnesota APP, Unanticipated Discoveries Plan, Stormwater Pollution Prevention Plan, VMP, and the HDD Contingency Plan.

C. Lands of Historical, Archaeological, and Cultural Significance

548. Minn. R. 7852.1900, subp. 3(C) requires consideration of impacts to “lands of historical, archaeological, and cultural significance.”

⁶⁶⁰ Ex. DOC-18 at 5-162 – 5-163 (FEIS).

⁶⁶¹ Ex. DOC-18 at 5-162 – 5-164 (FEIS).

⁶⁶² See, e.g., Ex. DOC-18 at 5-164 – 5-166 and Appendix D at 19, 24-26 (Minnesota ECP) (FEIS).

⁶⁶³ See, e.g., Ex. DOC-18 at 5-165 (FEIS).

⁶⁶⁴ Ex. DOC-18, Appendix H at Sections 7.11, 7.13, 7.14, 7.15, 8 (Sample Routing Permit) (FEIS).

⁶⁶⁵ Ex. Summit-13 at 3 (Zoller Direct).

549. The Applicant initiated Phase 1 cultural survey investigations in Fall 2021 for RA-South.⁶⁶⁶ The Applicant's survey protocols were submitted to and approved by SHPO prior to the start of fieldwork.⁶⁶⁷ In addition, the SHPO inventory files and the Minnesota Office of the State Archaeologist online portal were used to identify known Precontact and Post-Contact archaeological resources and unrecorded historic cemeteries within one mile of the route width for each route alternative.⁶⁶⁸ Within the 300-foot-wide survey corridor for the route alternatives, the Applicant has surveyed for archaeological resources and facilitated Tribal cultural resources surveys for about one percent of RA-North, about 60% of RA-Hybrid,⁶⁶⁹ and about 99.8% of RA-South.⁶⁷⁰

550. The record demonstrates Summit's extensive coordination with and commitment to working with Tribes on cultural surveys. Summit has reached out to 62 Tribes with current and historic ties to the MCE Project area, including the 11 federally recognized Minnesota Tribes. Initial outreach occurred in August 2021 with Project information and an invitation to participate in field studies. In December of 2021, each Tribe was invited to conduct TCP studies in the Project area along RA-South. Summit offered to compensate Tribes for conducting studies that seek to identify possible TCP/historic properties that could be located within the Project corridor along RA-South. Summit has elected to target 100% inventory (or, cultural survey) of the Project route, not just high probability areas and federal jurisdictional areas. Where Summit has been granted permissions to access a property, the Tribes have been afforded the opportunity to accompany archaeological crews along the entire RA-South route, or to conduct their own studies if permitted by the landowner. In Minnesota, specifically, the following Tribes have participated in the cultural resource surveys: Rosebud Sioux, Mille Lacs Ojibwe, Sisseton Wahpeton Oyate, and Yankton Sioux. All resources identified by the Traditional Cultural Specialists have been avoided.⁶⁷¹

551. Archaeological resources or unrecorded historic cemeteries identified outside of the Project route width are not expected to be impacted by the Project.⁶⁷²

552. One archaeological resource was identified within the route width for RA-North. This resource has not been evaluated for NRHP listing. No unrecorded historic cemeteries were identified within the RA-North route width.⁶⁷³ Should the Commission select RA-North, field surveys may be required.

553. Four archaeological resources were identified within the route width for RA-Hybrid. Of these, three resources have been evaluated and determined Not Eligible under the NRHP program; the remaining site has been evaluated and recommended

⁶⁶⁶ Ex. Summit-1 at 125 (Application) and Ex. DOC-18 at 5-77 (FEIS).

⁶⁶⁷ Ex. Summit-27 at 2-3 (Zoller Surrebuttal); Ex. DOC-18 at 5-77 (FEIS).

⁶⁶⁸ Ex. DOC-18 at 5-76 – 5-77 (FEIS).

⁶⁶⁹ Ex. DOC-18 at 5-77 (FEIS).

⁶⁷⁰ Ex. Summit-13 at 3 (Zoller Direct).

⁶⁷¹ Ex. Summit-13 at 4 (Zoller Direct).

⁶⁷² Ex. DOC-18 at 5-81 (FEIS).

⁶⁷³ Ex. DOC-18 at 5-78, 5-82 (FEIS).

Not Eligible. No unrecorded historic cemeteries were identified within the RA-Hybrid route width.⁶⁷⁴ Should the Commission select RA-Hybrid, additional field surveys may be required.

554. Six archaeological resources were identified within the route width for RA-South. Of these, three resources have been evaluated and recommended to be Not Eligible and three have been determined by SHPO to be Not Eligible under the NRHP program. Construction of the Project would result in negligible impacts on these resources. No unrecorded historic cemeteries were identified within the RA-South route width. The field surveys conducted by Summit for RA-South identified seven archaeological sites: 21OT0228 (located within route width), 21OT0229, 21OT0235 (located within route width), 21WL0075 (located within route width), 21WL0076, 21WL0107 (located within route width), and 21WL0108 (located within route width).⁶⁷⁵ All resources identified by the Traditional Cultural Specialists during the field surveys of RA-South have been avoided.⁶⁷⁶ To date, Summit has surveyed 99.8% of RA-South, and the construction of the Project along RA-South will not impact any cultural resources listed or eligible for listing under the NHPA or Tribal areas of interest.⁶⁷⁷

555. The record demonstrates that the Project will avoid or minimize impacts to archaeological sites and historic structures eligible for listing in the NRHP. In accordance with EERA's recommendation and Summit's commitment, Summit has stated that it will complete archeological surveys regardless of the route selected and is committed to avoiding impacts to any identified eligible cultural resources and Tribal areas of interest through route modifications or construction methodology. If identified resources cannot be avoided, then treatment plans would be developed with Tribes and SHPO, as appropriate.⁶⁷⁸ Additionally, if the Applicant discovers significant cultural resources findings in or adjacent to MnDOT ROW, the Applicant will contact the MnDOT Cultural Resource Unit and prepare a Post Review Discovery Plan.⁶⁷⁹ Summit has also prepared a Minnesota Unanticipated Discoveries Plan outlining steps to be taken if previously unrecorded cultural resources or human remains are encountered during construction.⁶⁸⁰ Further, the Sample Route Permit contains measures to mitigate potential impacts to archaeological resources.⁶⁸¹

556. SHPO inventory files, through the online Minnesota Statewide Historic Inventory Portal, were used to identify previously recorded historic architectural resources for each route alternative. Additionally, the National Park Service online

⁶⁷⁴ Ex. DOC-18 at 5-79, 5-82 (FEIS).

⁶⁷⁵ Ex. DOC-18 at 5-79 – 5-80, 5-82 (FEIS).

⁶⁷⁶ Ex. Summit-13 at 4 (Zoller Direct).

⁶⁷⁷ Ex. Summit-13 at 9-10 (Zoller Direct).

⁶⁷⁸ Ex. Summit-13 at 9-10 (Zoller Direct) and Ex. DOC-18 at 5-84 (FEIS).

⁶⁷⁹ Ex. DOC-18 at 5-83 (FEIS).

⁶⁸⁰ Ex. DOC-18 at 5-83 and Appendix L (Minnesota Unanticipated Discoveries Plan) (FEIS).

⁶⁸¹ Ex. DOC-18, Appendix H at Sections 7.19, 8 (Sample Routing Permit) (FEIS).

NRHP database was reviewed to identify if NRHP Listed or Eligible Historic Properties or National Historic Landmarks are present within each route alternative.⁶⁸²

557. Three previously identified historic architectural resources are located within the route width for RA-North; all three are Not Eligible for the NRHP.⁶⁸³

558. Four previously identified historic architectural resources are located within the route width for RA-Hybrid; all four are Not Eligible for the NRHP.⁶⁸⁴

559. Two previously identified historic architectural resources are located within the route width for RA-South; both are Not Eligible for the NRHP.⁶⁸⁵

560. No properties listed in the NRHP nor the State Historic Sites Network have been inventoried previously within the route widths for the route alternatives. Therefore, further review pursuant to the Minnesota Historic Sites Act is not warranted.⁶⁸⁶

561. The record demonstrates that the Project will avoid or minimize impacts to historical architectural resources eligible for listing in the NRHP. Summit has stated that impacts on all historic structures eligible for listing in the NRHP will be avoided through adoption of reroutes or construction methodology (for example, HDD). If additional eligible sites, identified after Summit's surveys completed in 2022, cannot be avoided through design or construction efforts, the Applicant would conduct formal evaluations in consultation with SHPO and develop avoidance or treatment plans to minimize or mitigate effects on those sites.⁶⁸⁷ Additionally, the Sample Route Permit contains measures to mitigate potential impacts to historical architectural resources.⁶⁸⁸

562. Archaeological resources were identified within the route width for all route alternatives. None of the archaeological sites within the route width for the route alternatives have been determined to be Eligible for or Listed in the NRHP. However, not all sites have been previously evaluated to determine their NRHP eligibility, but they have the potential to be found Eligible.⁶⁸⁹

563. To date, Summit has surveyed 99.8% of RA-South, and the construction of the Project along RA-South will not impact any cultural resources listed or eligible for listing under the NHPA or Tribal areas of interest.⁶⁹⁰

⁶⁸² Ex. DOC-18 at 5-84 (FEIS).

⁶⁸³ Ex. DOC-18 at 5-84 (FEIS).

⁶⁸⁴ Ex. DOC-18 at 5-85 (FEIS).

⁶⁸⁵ Ex. DOC-18 at 5-86 (FEIS).

⁶⁸⁶ Ex. DOC-18 at 5-87 (FEIS).

⁶⁸⁷ Ex. DOC-18 at 5-87 (FEIS).

⁶⁸⁸ Ex. DOC-18, Appendix H at Sections 7.19, 8 (Sample Routing Permit) (FEIS).

⁶⁸⁹ Ex. DOC-18 at 5-81 (FEIS).

⁶⁹⁰ Ex. Summit-13 at 9-10 (Zoller Direct).

D. Impacted Economies

564. Minn. R. 7852.1900, subp. 3(D) requires consideration of “economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations.”

565. During the construction period, lands within the construction workspace would not be available for agricultural use, and crops could not be produced. These impacts would be temporary and limited mostly to the length of the construction period of six months or less.⁶⁹¹ Following construction, lands impacted by construction will be restored to pre-construction conditions and existing agricultural activities will resume, except at permanent aboveground facility sites.⁶⁹² The Applicant has developed the Minnesota ECP and Minnesota APP, which include BMPs and Project-specific measures that would be implemented to minimize and mitigate impacts to agricultural land.⁶⁹³

566. Permanent impacts to agricultural land are only anticipated at aboveground facility locations that will be fenced and removed from current use (approximately 0.7 acres).⁶⁹⁴ Operation of the pipeline would result in minimal impacts on agricultural lands. The pipeline would be buried with a cover depth of 54 inches, which is below the depth at which normal agricultural operations occur, so agricultural activities would be allowed to resume within the operational ROW after final restoration activities.⁶⁹⁵

567. Individual landowners would be compensated for operational pipeline easements as well as for use of temporary construction workspaces.⁶⁹⁶

568. Disturbance from construction could result in reduced crop production for a period extending beyond construction.⁶⁹⁷ Compensation for crop loss would be negotiated between the applicant and the landowner.⁶⁹⁸ Landowners will be compensated by Summit for losses to crop production during construction.⁶⁹⁹ The Applicant has committed to compensating landowners upfront for three years of crop damages; if crop damages go beyond three years, the Applicant has stated that it is committed to work with landowners to restore soil health and continue to make

⁶⁹¹ Ex. DOC-18 at 5-70 (FEIS).

⁶⁹² Ex. DOC-18 at 11-12 (FEIS).

⁶⁹³ See Ex. DOC-18, Appendix D (Minnesota ECP) and Appendix E (Minnesota APP) (FEIS).

⁶⁹⁴ Ex. DOC-18 at 11-12 (FEIS).

⁶⁹⁵ Ex. DOC-18 at 5-70 (FEIS).

⁶⁹⁶ Ex. DOC-18 at 5-62 (FEIS).

⁶⁹⁷ Ex. DOC-18 at 5-70 (FEIS).

⁶⁹⁸ Ex. DOC-18 at 5-71, 5-73 (FEIS).

⁶⁹⁹ Ex. Summit-11 at 6 (Powell Direct).

landowners whole for crop losses.⁷⁰⁰ Additionally, the Sample Route Permit includes measures to mitigate potential impacts to agriculture.⁷⁰¹

569. No commercial properties are located within the three route alternatives. Impacts to commercial economies are expected to be negligible.⁷⁰²

570. An ethanol plant is located at the east end of the three route alternatives. No other industrial facilities exist within the route width of the three alternatives. Impacts during construction due to potential temporary localized traffic delays will be short term and negligible. Impacts during operation of the pipeline and capture facility are not anticipated.⁷⁰³

571. No forestry operations are located within the local vicinity of the three route alternatives. RA-North, RA-Hybrid, and RA-South do not cross significant forested areas. Commercial timber harvest is not expected in the route width. Impacts to forestry are expected to be negligible.⁷⁰⁴

572. During construction, impacts on tourism across all three route alternatives would be short term and negligible to minimal.⁷⁰⁵ During operations, the Project's impacts on tourism economies would be negligible.⁷⁰⁶ As discussed above, the FEIS concluded that recreational impacts are anticipated to be short-term during construction; operation of the Project would not cause visual or noise impacts on recreational resources.⁷⁰⁷

573. The Aggregate Source Information System maintained by MnDOT shows no aggregate sources along any of the route alternatives. Impacts to mining are expected to be negligible.⁷⁰⁸

574. Regardless of the route selected by the Commission, the Project is not anticipated to have a significant impact on economies. However, the record demonstrates that RA-South, which is routed primarily through agricultural land, is designed to avoid or minimize impacts on agricultural land by taking into consideration comments and requests from individual landowners.

E. Pipeline Cost and Accessibility

575. Minn. R. 7852.1900, subp. 3(E) requires consideration of "pipeline cost and accessibility."

⁷⁰⁰ Aug. 21, 2024 Pub. Hrg. Tr. at 39.

⁷⁰¹ Ex. DOC-18, Appendix H at Sections 6.4, 7.4, 7.13, 8 (Sample Routing Permit) (FEIS).

⁷⁰² Ex. DOC-18 at 5-6 – 5-7 (FEIS).

⁷⁰³ Ex. DOC-18 at 11-12 – 11-13 (FEIS).

⁷⁰⁴ Ex. DOC-18 at 5-6 – 5-7 (FEIS).

⁷⁰⁵ Ex. DOC-18 at 11-13 (FEIS).

⁷⁰⁶ Ex. DOC-18 at ES-8 (FEIS).

⁷⁰⁷ Ex. DOC-18 at 5-57, 5-59 (FEIS).

⁷⁰⁸ Ex. DOC-18 at 5-6 – 5-7 (FEIS).

576. The estimated cost for the pipeline portion of RA-South is \$37.0 million, plus or minus 15%.⁷⁰⁹

577. The estimated cost for the pipeline portion of RA-North is \$40.0 million, plus or minus 15%.⁷¹⁰

578. The estimated cost for the pipeline portion of RA-Hybrid is \$40.4 million, plus or minus 15%.⁷¹¹

579. The estimate for the capture facility is the same for all route alternatives and is estimated at \$29.75 million, plus or minus 15%.⁷¹²

580. No party raised any concerns regarding the accessibility of any route alternative.

581. RA-South is the lowest cost route alternative.

F. Use of Existing ROW

582. Minn. R. 7852.1900, subp. 3(F) requires consideration of “use of existing rights-of-way sharing or paralleling.”

583. All three route alternatives parallel existing rights-of-way for a portion of their length. RA-North parallels existing road rights-of-way for 22.1 miles (or 96% of its length); RA-Hybrid parallels existing road rights-of-way for 22.3 miles (or 76.5% of its length); and RA-South parallels existing road rights-of-way for 13.0 miles (or 46.1% of its length).⁷¹³

G. Mitigation by Regulatory Control

584. Minn. R. 7852.1900, subp. 3(G) requires consideration of “the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.”

585. The FEIS discusses the extent to which human and environmental effects are subject to mitigation in Chapter 5 and proposed several special conditions for the Route Permit to mitigate potential impacts. Summit witnesses provided commitments and/or clarifications on behalf of Summit regarding these mitigation measures. These conditions are repeated in Section XII below.

⁷⁰⁹ Ex. DOC-18 at 11-4 – 11-5 (FEIS).

⁷¹⁰ Ex. DOC-18 at 11-4 – 11-5 (FEIS).

⁷¹¹ Ex. DOC-18 at 11-4 – 11-5 (FEIS).

⁷¹² Ex. DOC-18 at 11-4 – 11-5 (FEIS). The Applicant estimates the total cost for the Project (pipeline portion and capture facility) to be \$69.75 million for RA-North, \$70.12 million for RA-Hybrid, and \$66.75 million for RA-South (plus or minus 15%). Ex. DOC-18 at 5-62 (FEIS).

⁷¹³ Ex. DOC-18 at 11-13 (FEIS).

H. Cumulative Potential Effects

586. Minn. R. 7852.1900, subp. 3(I) requires consideration of “cumulative potential effects of related or anticipated future pipeline construction.” Cumulative potential effects are environmental effects that result from the proposed Project in conjunction with other proposed projects in the environmentally relevant area as defined in Minn. R. 4410.0200, subp. 11a.

587. The FEIS evaluated the cumulative potential effect and evaluated current and future projects that were reasonably “foreseeable in the next five years.” Based on this criterion, the FEIS evaluated cumulative potential effects related to a number of projects, identified in Table 10-1 of the FEIS. Most of these projects are infrastructure related. Several support recreational opportunities and would benefit surrounding lakes, watercourses, and natural areas.⁷¹⁴

588. After analyzing potential cumulative potential effects of the proposed Project and these reasonably foreseeable projects across human settlement, economies, archaeological and historic resources, and natural environment, the FEIS concluded that the cumulative potential effects are similar among the three route alternatives and will be generally short-term and negligible to minimal.⁷¹⁵

I. Rules, Policies, Regulations

589. Minn. R. 7852.1900, subp. 3(J) requires consideration of “the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.”

590. Each of the proposed route alternatives must comply with the relevant applicable policies rules and regulations of the relevant federal and state agencies, and local government land use requirements.⁷¹⁶

VIII. Analysis

591. CURE argues that if the Commission does not deny a routing permit, the Commission should select the No Action alternative. Or, in the alternative, CURE asserts that RA-North is the “least detrimental route alternative.”

592. Effects on human settlement are similar among the three route alternatives. RA-South has fewer residents than the other route alternatives within 800 feet of the centerline. Additionally, the Applicant has obtained landowner agreements along RA-South and has designed RA-South to take into consideration

⁷¹⁴ Ex. DOC-18 at 10-1 – 10-5 (FEIS).

⁷¹⁵ Ex. DOC-18 at 10-7 – 10-17, 11-4 (FEIS).

⁷¹⁶ Ex. DOC-18 at 11-13 (FEIS).

comments and requests from individual landowners. Accordingly, effects on human settlement favor RA-South.

593. Effects on the natural environment are similar among the three route alternatives.

594. CURE argues that RA-South crosses greatest number of acres of public and designated land,⁷¹⁷ crosses the greatest number of wetlands⁷¹⁸ and the second greatest number of surface waters,⁷¹⁹ crosses the most acres of several types of sensitive soils,⁷²⁰ uses the least amount of existing rights-of-way or right-of-way sharing and paralleling,⁷²¹ requires twice the number of HDD or bore crossings of perennial streams and rivers as RA-North,⁷²² and is located within one mile of 73 wells (as opposed to 56 wells and 42 wells for RA-North and RA-Hybrid, respectively).⁷²³

595. All three route alternatives would cross one Waterfoul Production Area parcel at MP 0.3, near the ethanol plant where the three route alternatives follow the same route. RA-South does intersect with several WPAs; however, the WPAs do not cross the centerline for RA-South, and they would not be impacted by the construction workspace.⁷²⁴ Potential project impacts on public and designated lands for all three route alternatives would be short term and negligible.

596. Four out of the 56 wells within one mile of RA-North are within the RA-North construction workspace. None of the 42 wells within one mile of the RA-Hybrid route centerline would be within the construction workspace. One of the 73 wells within one mile of RA-South is located within the construction workspace.⁷²⁵

597. RA-Hybrid has the largest total footprint acreage and crosses the most acres of sensitive soil, at 332.7 acres. RA-South has the second-largest footprint acreage and crosses 319.2 acres of sensitive soil. RA-North has 289.8 total acres and crosses 259.2 acres of sensitive soil.⁷²⁶

598. Relative differences between RA-South and RA-North in impacts on the natural environment are offset by detriments of RA-North.

⁷¹⁷ Ex. DOC-18 at 5-112 (FEIS).

⁷¹⁸ Ex. DOC-18 at 5-153–54 (FEIS).

⁷¹⁹ Ex. DOC-18 at 5-138–43 (FEIS).

⁷²⁰ Ex. DOC-18 at 5-126 (FEIS).

⁷²¹ Ex. DOC-18 at 11-13 (FEIS).

⁷²² Ex. DOC-18 at 5-138–43 (FEIS).

⁷²³ Ex. DOC-18 at 5-144 (FEIS). The EIS provides that this count is based on the County Well Index, which does not include all existing wells. A pre-construction survey would be required to identify all wells within the construction workspaces.

⁷²⁴ Ex. DOC-18 at 5-112 (FEIS).

⁷²⁵ Ex. DOC-18 at 5-144 (FEIS).

⁷²⁶ Ex. DOC-18 at 5-126 (FEIS).

599. Significantly, RA-North does not achieve the purpose of the project to connect to the MCE Project in North Dakota.⁷²⁷ RA-North terminates at a different point on the Minnesota–North Dakota Border. There would be significant challenges routing through Wahpeton, North Dakota, if RA-North were selected.⁷²⁸

600. There is no landowner or community support for RA-North or RA-Hybrid. Neither materially reduces potential impacts of the Project, and both simply shift those impacts to other locations.⁷²⁹

601. RA-North would have more than double the noise sensitive receptors (NSRs) within 400 feet of the pipeline centerline (21 NSRs) as compared to RA-South (10 NSRs).⁷³⁰

602. RA-Hybrid has higher potential for archaeological resources than the other two route alternatives. RA-North has low potential for archaeological resources based on proximity to waterbodies and previously identified archaeological resources in the vicinity. RA-South has low potential for archaeological resources based on survey results. Archaeological and Tribal cultural resource surveys have been conducted for about 99.8% of RA-South, and the construction of the Project along RA-South will not impact any cultural resources listed or eligible for listing under the NHPA or Tribal areas of interest. Accordingly, effects on lands of historical, archaeological, and cultural significance favor RA-South.

603. Effects on land-based economies are expected to be minimal and do not significantly favor any of the route alternatives.

604. As RA-South is less expensive to build than RA-North or RA-Hybrid, consideration of pipeline cost and accessibility favors RA-South.

605. All three route alternatives parallel existing rights-of-way for a portion of their length. While a lower percentage of the RA-South route follows existing rights-of-way as compared to the other route alternatives, placement of the route on these parcels reflects landowners' requests for route placement to minimize impacts. RA-South reflects the routing feedback of landowners along the route as well as agencies and tribal governments.⁷³¹

606. Mitigation by regulatory control, policies, rules, and regulations do not favor or disfavor any of the proposed route alternatives.

607. Cumulative potential effects are similar among the three route alternatives and will be generally short-term and negligible to minimal.

⁷²⁷ Ex. Summit-12 at 6 (O'Konek Direct).

⁷²⁸ Ex. Summit-12 at 6 (O'Konek Direct).

⁷²⁹ Ex. Summit-12 at 6–7 (O'Konek Direct).

⁷³⁰ Ex. DOC-18 at 5-31–35 (FEIS).

⁷³¹ Ex. Summit-12 at 7 (O'Konek Direct).

608. When considering all the criteria in Minn. R. 7852.1900, subp. 3, RA-South is the best route alternative for the Project.

IX. Routing Permit Conditions and Proposed Mitigation Measures

609. The Applicant proposed numerous mitigation measures to avoid, minimize, and/or mitigate potential impacts, as detailed in the FEIS.

A. Uncontested Conditions and Mitigation Measures

610. EERA proposed, and the Applicant concurs with, the following revision to Section 7.13 of the Sample Route Permit:

“... Soil excavated from the wetlands and riparian areas shall be contained and not placed back into the wetland or riparian area until necessary to restore the excavated trench in the wetland or riparian area.”

611. EERA’s proposed revision to Section 7.13 of the Sample Route Permit is reasonable and is consistent with the conditions of the USACE’s Utility Regional General Permit, which the Applicant anticipates obtaining for the Project.”⁷³²

612. EERA recommended, and Applicant agreed to, the following mitigation measures to be documented in the route permit as special conditions:

- A. The Applicant shall provide its Human Trafficking Prevention Training for Commission review 30 days prior to submittal of the Plan and Profile.⁷³³
- B. That Applicant shall file with the Commission the Emergency Response Plan that is filed with PHMSA prior to the start of operations.⁷³⁴
- C. The Applicant shall file the following information, developed in coordination with local emergency responders, for Commission review 30 days prior to submittal of the Plan and Profile:
 - Specific equipment, training, and reimbursement to be provided to emergency managers.
 - List of the names of the emergency responders and a provision to update contact information as needed.
 - Discussion on the feasibility of a “reverse 911” notice or other electronic notification system, such as Send Word

⁷³² Ex. Summit-13 at 14-15 (Zoller Direct).

⁷³³ Ex. DOC-18 at 5-46 (FEIS).

⁷³⁴ Ex. DOC-18 at 8-30 (FEIS) and Ex. Summit-11 at 7-8 (Powell Direct).

Now, that goes out to landowners' telephones in the event of an emergency shutdown or rupture.

- Identification of how the applicant would pay for costs of any repair to public infrastructure or private property (including crops and livestock) that might occur during an accidental release.⁷³⁵
- D. The Applicant shall provide its public education plan for Commission review 30 days prior to submittal of the Plan and Profile. The public education plan could include specific safety information for neighboring landowners (residences within a minimum 1,000 feet of the Project), including what to do in case of a rupture.⁷³⁶
- E. The Applicant shall provide documentation of coordination with residents located within 1,320 feet of HDD entries, including documentation of locations of sound dampening barrier walls and a plan for monitoring noise levels at these locations during HDD operations. The information should be provided 30 days prior to submittal of the Plan and Profile.⁷³⁷
- F. The Applicant shall provide the revised Minnesota ECP to the Commission 30 days prior to the Plan and Profile submittal.⁷³⁸
- G. The Applicant shall provide documentation of coordination with the Fergus Falls Fish & Game Club to minimize visual and noise impacts during construction, if issued a route permit.⁷³⁹
- H. The Applicant shall file with the Commission the results of the Phase I Geohazard Assessment and any subsequent Phase II and/or Phase III assessments prior to the start of construction.⁷⁴⁰
- I. The Applicant shall complete appropriate surveys for archaeological resources that meet state standards and guidelines. If archaeological resources are found, consultation with Tribes, SHPO, and the Office of the State Archaeologist should be conducted, as appropriate, to provide the opportunity to review and comment on the results, determine if additional studies to evaluate

⁷³⁵ Ex. DOC-18 at 8-31 (FEIS) and Ex. Summit-11 at 9-10 (Powell Direct).

⁷³⁶ Ex. DOC-18 at 8-31 (FEIS) and Ex. Summit-11 at 8 (Powell Direct).

⁷³⁷ Ex. DOC-18 at 5-38 (FEIS) and Ex. Summit-13 at 16 (Zoller Direct).

⁷³⁸ Ex. DOC-18 at 5-159 (FEIS).

⁷³⁹ Ex. DOC-18 at 5-60 (FEIS).

⁷⁴⁰ Ex. DOC-18 at 5-111 (FEIS).

the NRHP eligibility of the resources are warranted, and develop appropriate avoidance or treatment plans.⁷⁴¹

- J. The Applicant shall prepare a plan for pipeline construction in areas crossing the beach ridge area. The plan would include, at a minimum, measures to minimize the potential for breaching a shallow confined aquifer during construction and contingency measures to mitigate the impacts of a breach should one occur. This plan should be developed in coordination with DNR.⁷⁴²

613. The special conditions recommended by EERA and agreed to by the Applicant are reasonable.

614. DNR recommended, and Applicant agreed to, the following mitigation measures to be documented in the route permit as special conditions:

- A. The Applicant shall conduct unintentional release evaluations for waterbody crossings proposed to be installed via HDD to ensure the soils are amenable to HDD.⁷⁴³
- B. A Vegetation Management Plan (VMP) should be prepared in consultation with the Vegetation Management Plan Working Group (VMPWG), a multi-agency group led by EERA staff in conjunction with several other state agencies, to address potential impacts related to pipeline construction, operation, and maintenance. The VMP should discuss existing vegetation, reestablishment and restoration, seed mixes, noxious weeds and invasive species, herbicide use, sensitive plant communities, and other topics identified during coordination with the VMPWG.⁷⁴⁴
- C. The Applicant will use wildlife-friendly erosion and sediment control BMPs that contain biodegradable netting with natural fibers. The Applicant will follow MnDOT's 2020 Standard Specifications for Construction for rolled erosion control materials that specify only natural fibers with no plastic mesh be used.⁷⁴⁵
- D. The Applicant will conduct exploratory borings to characterize the shallow subsurface at any location sheet piling may be used, subject to obtaining landowner permission, and the results shall be submitted to DNR groundwater staff.⁷⁴⁶

⁷⁴¹ Ex. DOC-18 at 5-84 (FEIS) and Ex. Summit-13 at 9-10 (Zoller Direct).

⁷⁴² Ex. DOC-18 at 5-152 (FEIS) and Evid. Hrg. Tr. at 37-38 (Zoller).

⁷⁴³ Ex. DOC-18 at 5-123, 5-151 – 5-152 (FEIS) and Ex. Summit-13 at 15-16 (Zoller Direct).

⁷⁴⁴ Ex. DOC-18 at 5-124, 5-135 (FEIS) and Ex. Summit-13 at 12 (Zoller Direct).

⁷⁴⁵ Ex. DOC-18 at 5-165 – 5-166 (FEIS) and Ex. Summit-13 at 13 (Zoller Direct).

⁷⁴⁶ Ex. DOC-18 at 5-151 – 5-152 (FEIS) and Evid. Hrg. Tr. at 37-38 (Zoller).

615. The special conditions recommended by DNR and agreed to by the Applicant are reasonable.

B. Disputed or Unresolved Conditions and Mitigation Measures

616. EERA initially recommended, and the Applicant agreed to, a special condition requiring the Applicant to provide indoor CO₂ detectors for residences within 1,000 feet of the Project.⁷⁴⁷ Additionally, in the FEIS, EERA recommended a special condition requiring the Applicant to provide outdoor CO₂ detectors for residences within 1,000 feet of the Project.⁷⁴⁸

617. At the evidentiary hearing EERA staff testified that EERA has not identified any particular available technology for such detectors, or the feasibility thereof, and stated that more information would be needed on the feasibility of providing indoor and outdoor CO₂ detectors before making a final recommendation that such detectors be provided.⁷⁴⁹

618. Additionally, the FEIS states, “[t]he full rupture results in impacts too quickly for an early warning device, such as an oxygen detector, to be effective.”⁷⁵⁰

619. Accordingly, the record does not support a special condition requiring the Applicant to provide indoor and/or outdoor CO₂ detectors for residences within 1,000 feet of the Project at this time.

620. Summit proposed the following special condition requiring a discussion of the feasibility and efficacy of providing indoor and outdoor monitors as follows:

The Applicant shall provide a discussion of the feasibility and efficacy of providing indoor and/or outdoor CO₂ detectors to residences within 1,000 feet of the Project for review by the Commission 30 days prior to submittal of the Plan and Profile.

621. Summit witness James Powell testified that he had evaluated the recommendation for indoor and outdoor air monitors. His belief is that a contemplated reverse-911 system would be more effective because it would provide faster notice to individuals in the proximity to an unplanned release of CO₂. Individuals could be notified by text, cell phone, or other electronic device.⁷⁵¹

622. Because CO₂ may collect in low-lying areas, particularly in the basements of nearby homes, Summit’s proposed special condition is reasonable, with the following modification:

⁷⁴⁷ See Ex. DOC-18 at 8-30 – 8-31 (FEIS) and Ex. Summit-11 at 7 (Powell Direct).

⁷⁴⁸ See Ex. DOC-18 at 8-30 – 8-31 (FEIS).

⁷⁴⁹ Evid. Hrg. Tr. at 180 (Levi).

⁷⁵⁰ Ex. DOC-18 at 10 of Addendum to Appendix G (FEIS).

⁷⁵¹ Evid. Hrg. Tr. at 98:5–100:18 (Powell)

The Applicant shall provide a discussion of the feasibility and efficacy of providing indoor and/or outdoor CO₂ detectors to residences within 1,000 feet of the Project for review by the Commission 30 days prior to submittal of the Plan and Profile. The discussion must (1) contemplate the risk that a leak or rupture is not immediately detected; and, (2) specifically address the potential for an unplanned release of CO₂, whether by leak or by rupture, to collect in the basement of a home within 1,000 feet of the Project.

623. EERA recommended a special condition requiring the Applicant to prepare a monitoring protocol in coordination with DNR to identify potential impacts to fish and wildlife, water resources, and other environmental resources should an accidental release (leak or rupture) of CO₂ occur.⁷⁵² Summit raised concerns that the proposed condition is vague as to timing and the reference to “other environmental resources” and offered modified condition language.⁷⁵³

624. Summit proposed a modification to EERA’s recommendation:

In the event of an accidental release of CO₂ from the pipeline, the Applicant will coordinate with DNR to assess impacts to fish and wildlife, water resources, other protected environmental resources, as applicable.

625. It is reasonable to adopt Summit’s proposed modifications.

626. DNR recommended that “[a]t a minimum, Pennsylvania standards for trench breaker placement should be used, and knowledge gained from additional subsurface site characterization may provide further guidance on where to place trench breakers most effectively. Trench breakers should be used at the entrance and exit of every waterbody regardless of slope (except for HDD crossings).”⁷⁵⁴

627. The Applicant proposes to install trench breakers at the entry and exit from every public water crossing, except for at HDD crossings. In addition, as outlined in Section 5.5 of the Minnesota ECP, trench breakers will be installed at wetland boundaries where the pipeline trench may cause a wetland to drain, or the trench bottom will be sealed to maintain wetland hydrology. The Applicant has and continues to diligently analyze and determine the most appropriate locations for trench breakers across the Project based on a variety of factors. The Applicant’s trench breaker plans account for the substantial body of knowledge that its construction staff has regarding the placement of trench breakers as well as accounting for local, site-specific knowledge to use trench breakers most effectively. Use of this field condition review will ensure that the Applicant will not install trench breakers where they would not provide the intended benefit. While the Applicant does not intend to specifically implement the Pennsylvania standards, the Applicant’s plans will achieve the same or greater levels of

⁷⁵² Ex. DOC-18 at 8-31 (FEIS).

⁷⁵³ Summit Post-Hearing Brief at 30 (September 18, 2024).

⁷⁵⁴ Ex. DOC-18 at 5-151 (FEIS).

protection, which is consistent with the Pennsylvania standards regarding the use of alternate best management practices.⁷⁵⁵

628. Accordingly, DNR's recommendation that the Pennsylvania standards for trench breaker placement be used and trench breakers be used at the entrance and exit of every waterbody regardless of slope (except for HDD crossings) is not warranted and no special condition is recommended.

629. CURE proposes the following permit conditions if the Commission grants a routing permit:

- A. The Applicant should be barred from purchasing pipeline hardware, staging construction areas and pipe yards, preconstruction activities, construction, or operation of the pipeline until North Dakota issues a route permit and injection permits and PHMSA has completed the rulemaking process for much-needed updates to the hazardous liquid pipeline regulations.
- B. The Applicant should be required to provide financial assurance in an independent escrow account in the amount of total decommissioning costs up front, before construction begins. The Commission should also require the Applicant to maintain a contingency fund to ensure that in the event of construction damage or a pipeline leak or rupture, the Applicant is able to cover the cost of remediation.
- C. The Commission should require the Applicant to produce annual records of the amount of CO₂ captured at Green Plains, the amount of CO₂ that entered into the pipeline at Green Plains, the amount of CO₂ exiting Minnesota at the Red River/Bois de Sioux river crossing, the amount of CO₂ injected into the to-be-permitted wells in North Dakota, the type of geologic formation into which the MCE's CO₂ is injected (i.e. a saline aquifer, a depleted oil or gas well, etc.), and the amount of CO₂ that leaks from or remains trapped in the target well(s) in North Dakota. Permanent sequestration should be verified by an independent third-party and not the Applicant or the state of North Dakota.
- D. Revegetation density targets should be higher than 70%. Alternatively, the Commission could adopt the Department of Natural Resources' recommendation for a Vegetation Management Plan to determine the appropriate targets.

⁷⁵⁵ Ex. Summit-12 at 10-11 (O'Konek Direct).

- E. Any permit issued must include a prohibition on the placement of temporary workspaces within or adjacent to wetlands or water resources.
- F. The Applicant should be required to document and report any amount of drilling fluid lost to the environment in the event of an inadvertent release during HDD activities.
- G. The Applicant should be required to disclose the type and quantity of chemicals used for HDD, and to update this information continuously and in public filings.

630. CURE also supports the mitigation measures recommended by the Minnesota Department of Transportation,⁷⁵⁶ the State Historic Preservation Office,⁷⁵⁷ the Department of Natural Resources,⁷⁵⁸ and the mitigation measures recommended by DOC-EERA in Chapter 11 of the FEIS.

631. Summit opposes CURE's proposed conditions.⁷⁵⁹

632. CURE does not identify where in the record there is sufficient evidence to impose the conditions it proposes.

633. CURE's proposed conditions are inadequately supported by the record and the Judge does not recommend them.

Based on these Findings of Fact, the Judge makes the following:

CONCLUSIONS OF LAW

1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.

2. The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 216G.02.

3. The Department complied with all applicable procedural requirements under Minnesota Statutes chapters 116D and 216G, and Minnesota Rules chapters 4410, 7852, and 1405.

I. EIS Adequacy

4. The Commission is charged with determining the adequacy of the FEIS for the Project.

⁷⁵⁶ *Id.* at 5-57.

⁷⁵⁷ *Id.* at 5-84.

⁷⁵⁸ *Id.* at 5-111, 5-123 to 124, 5-166.

⁷⁵⁹ Summit Reply Br., 18-19.

5. The public has been afforded opportunities for input to the scope of the EIS and the content of the DEIS and FEIS, as well as the adequacy of the FEIS in accordance with all applicable provisions of MEPA and Minn. R. Ch. 4410.

6. The scoping process conducted by the Department and Commission complied with the applicable requirements pursuant to Minn. R. 4410.2100. The draft EIS was prepared with the applicable requirements pursuant to Minn. R. 4410.2600. The final EIS was prepared with the applicable requirements pursuant to Minn. R. 4410.2700.

7. The final EIS adequately addressed the potentially significant issues and alternatives raised in the scoping decision issued on October 5, 2023 in conformance with Minn. R. 4410.2300(G), (H). 6.

8. The final EIS adequately responded to the substantive comments received during the draft EIS review concerning issues raised in scoping.

9. The final EIS meets the content requirements of Minn. R. 4410.2300.

10. The final EIS was prepared in compliance with the applicable requirements contained in Minn. Stat. ch. 116D and Minn. R. 4410.0200-.6500.

11. The proposed action is described in sufficient detail.

12. The EIS adequately analyzes significant environmental impacts.

13. The EIS adequately presents alternatives to the proposed action and their impacts.

14. The EIS adequately presents methods by which adverse environmental impacts can be mitigated.

15. The EIS adequately presents the economic, employment, and sociological effects that cannot be avoided should the proposed action or an alternative be implemented.

16. The final EIS is adequate under Minn. R. 4441.2800, subp. 4, because it:

- a) Addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with Minn. R. 4410.2300(O) and (H);
- b) Provides responses to the substantive comments received during the DEIS review concerning issues raised in the scoping process; and

- c) Was prepared in compliance with the procedures of MEPA and Minn. R. 4410.0200 to 4410.6500.

II. Routing Permit

17. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.

18. The Commission has jurisdiction over the Application pursuant to Minn. Stat. § 216G.02.

19. The Commission, EERA, and the Applicant have complied with all applicable procedural requirements, including the preparation of a FEIS in compliance with Minn. Stat. ch. 216G and Minn. R. ch. 7852.

20. The Administrative Law Judge has considered all the pertinent standards and criteria in accordance with Minn. R. 7852.1900 relative to the recommendation for an issuance of a routing permit under the route selection procedures.

21. The record demonstrates that RA-South is consistent with Minn. Stat. ch. 216G and that RA-South best satisfies the Route Permit criteria set forth in Minn. R. 7852.1900.

22. The evidence on the record demonstrates that constructing the Project along RA-South is not likely to cause the pollution, impairment, or destruction of the air, water, land, or other natural resources located within Minnesota, and that there is no more feasible and prudent alternative.

23. The record evidence demonstrates that RA-South is the best alternative for the Project.

24. Summit's request for a route width of 500 feet for most of the proposed route and a wider route width up to 1,808 feet in some areas to allow for additional route study and the potential need to make modifications to the pipeline alignment is reasonable and appropriate for the Project.

25. The Route Permit should be issued in the form set forth in Ex. DOC-18 (Appendix H to FEIS) with the additional conditions discussed above.

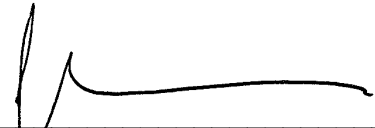
Based upon these Findings of Fact and Conclusions of Law, the Judge makes the following:

RECOMMENDATIONS

The Judge respectfully recommends that the Commission find the FEIS adequate under Minn. R. ch. 4410 and determine that the record thoroughly applies and satisfies the pipeline route selection procedures and criteria of Minn. R. ch. 7852.

Based upon these Conclusions, the Administrative Law Judge recommends that the Commission issue a Route Permit to Summit for construction and operation of RA-South, and that the permit include the draft permit conditions in Exhibit DOC-18 (Appendix H to FEIS) and as set forth above.

Dated: November 4, 2024



CHRISTA L. MOSENG
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.1275, .2700 (2023), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Summit Carbon Solutions, LLC, for a Routing Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota

**ORDER DENYING
MOTION TO STRIKE**

This matter is pending before Administrative Law Judge Christa L. Moseng upon the referral of this matter to the Office of Administrative Hearings by the Minnesota Public Utilities Commission for public-hearing proceedings pursuant to Minnesota Rules chapter 1405 in February 2023.

Public hearings were held on August 20 and 21, 2024. An evidentiary hearing was held on August 22, 2024.

On September 18, 2024, CURE filed its Initial Post-Hearing Brief (Initial Brief).

On October 4, 2024, the Minnesota Department of Commerce (Department) filed a Motion to Strike Portions of CURE's Initial Brief (Motion to Strike).

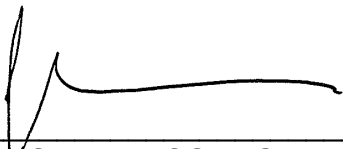
On October 16, 2024, Clean Up the River Environment (CURE) filed a Response to the Motion to Strike.

Based upon the submissions of counsel, the record, under Minn. R. 1405.0400, subp. 3, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

The Department's Motion to Strike is **DENIED**.

Dated: November 4, 2024



CHRISTA L. MOSENG
Administrative Law Judge

MEMORANDUM

The Department requests that the Judge strike portions of CURE's initial brief that it claims rely on extra-record evidence. It contends that "Allowing CURE to rely on this information violates basic principles of fairness and prejudices other parties who are deprived of an opportunity to evaluate CURE's new evidence through discovery and cross examination."¹ CURE disputes the Department's characterization and asserts that the passages identified by the Department are supported by comments submitted into the record by CURE or others.²

The Department asks that the following passages from CURE's initial brief be struck:

- Page 18, beginning with "Mr. Boeshans replied" through "open to enhanced oil recovery."
- Page 25, beginning with "Future development is also" through "State CO2 EOR Deployment Work Group."
- Page 21, beginning with "All portions of the MCE pass through" through "if the impact zone is large."
- Page 22, beginning with "The Applicant has repeatedly indicated" through "in the near future."
- Page 22, beginning with "Discrete environmental review of each branch" through page 23, ending with "project in the world."

This proceeding is being conducted according to Minn. R. 1405.0200–2700.³ Under Minn. R. 1405.2400 (2023),⁴

Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the board or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

All persons have the right to present evidence, rebuttal testimony, and argument and to cross-examine witnesses.⁵

First, closing arguments are generally not evidence.⁶ Because the factfinder in this case is first the Judge and ultimately the Commission, the risk of prejudice caused

¹ Motion to Strike, 1.

² The parties also dispute when the hearing record closed..

³ Order Accepting Application, Requiring Environmental Impact Statement, and Denying Petition; Notice of and Order for Hearing (Feb. 6, 2023).

⁴ Compare Minn. R. 1405.2400 (2023) with Minn. Stat. § 14.60 (contested case statute that does not create an exception for tax returns and tax reports).

⁵ Minn. R. 1405.1700.

by presentation of factual information outside the record is low. Either the arguments and claims in CURE's brief are supported by facts in the record or they are not. The factfinders are capable of disregarding extra-record evidence. It is generally sufficient in this context to point out improper evidence and not necessary to strike it.

Second, CURE points to evidence in the record that justifies the disputed passages, at least to a degree sufficient to render them within the realm of appropriate argument.

Finally, the parties also dispute when the hearing record closed, because a disputed statement in CURE's brief alludes to a written comment submitted after the evidentiary hearing.⁷ Hearings in this matter were held on August 21–23, 2024. Under Minn. R. 1405.1400, the hearing record closed on September 11, 2024, the deadline established by the Judge for written comments.⁸

Minn. R. 1405.0800 implicitly provides that comments may be “offered” after the evidentiary hearing.⁹ It further provides: “testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.”

Accordingly, written comments submitted on or before September 11, 2024, are appropriately part of the record and can be considered. Unverified, unsworn, or un-cross-examined evidence will be weighed accordingly by the Judge and considered together with the other evidence in the record.

C. L. M.

⁶ See CIVJIG 10.25 (Statements of Counsel and Judge).

⁷ Letter from CURE to Mr. Levi (Sept. 11, 2024).

⁸ Fourth Prehearing Order (July 5, 2024).

⁹ See Minn. R. 1405.0800 (B) (public participation may include “offering direct testimony or other material in written form at or following the hearing”).

November 4, 2024

See Attached Service List

Re: *In the Matter of the Application of Summit Carbon Solutions, LLC, for a Routing Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota*

**OAH 22-2500-38948
MPUC IP-7093/PPL-22-422**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION and ORDER DENYING MOTION TO STRIKE** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7845, samantha.cosgriff@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,


SAMANTHA COSGRIFF
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Summit Carbon Solutions, LLC, for a Routing Permit for the Otter Tail to Wilkin Carbon Dioxide Pipeline Project in Otter Tail and Wilkin Counties, Minnesota	OAH Docket No.: 22-2500-38948 MPUC IP-7093/PPL-22-422
--	---

On November 4, 2024, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION and ORDER DENYING MOTION TO STRIKE** was served by eService, and United States mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name
Katherine	Arnold	katherine.arnold@ag.state.mn.us	Office of the Attorney General-DOC
David	Bell	david.bell@state.mn.us	Department of Health
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron
Adam	Carlesco	acarlesco@fwwatch.org	Food & Water Watch
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC
Ryan	Cox	rcox@fredlaw.com	Fredrikson & Byron, P.A.
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources
Richard	Dornfeld	Richard.Dornfeld@ag.state.mn.us	Office of the Attorney General-DOC
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce
Todd	Green	Todd.A.Green@state.mn.us	Minnesota Department of Labor & Industry
Abigail	Hencheck	ahencheck@mncenter.org	Minnesota Center for Environmental Advocacy
Katherine	Hinderlie	katherine.hinderlie@ag.state.mn.us	Office of the Attorney General-DOC
Hudson	Kingston	hudson@curemn.org	CURE
Chad	Konickson	chad.konickson@usace.army.mil	U.S.Army Corps of Engineers
Stacy	Kotch Egstad	Stacy.Kotch@state.mn.us	MINNESOTA DEPARTMENT OF TRANSPORTATION
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.
Dawn S	Marsh	dawn_marsh@fws.gov	U.S. Fish & Wildlife Service
Sarah	Mooradian	sarah@curemn.org	CURE

Christa	Moseng	christa.moseng@state.mn.us	Office of Administrative Hearings
Kevin	Pranis	kpranis@liunagro.com	Laborers' District Council of MN and ND
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture
Nathaniel	Runke	nrunke@local49.org	International Union of Operating Engineers Local 49
John	Satterfield	jsatterfield@summitcarbon.com	Summit Carbon Solutions, LLC
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates
Rosalie	Solyntjes	msolyntjes@comcast.net	
Charles	Sutton	charles@suttonconsultingllc.com	
Cindy	Tassi	ctassi@summitcarbon.com	Summit Carbon Solutions
Jayme	Trusty	execdir@swrdc.org	SWRDC
Jen	Tyler	tyler.jennifer@epa.gov	US Environmental Protection Agency
Chris	Ventura	cventura@consumerenergyalliance.org	Consumer Energy Alliance
Jess	Vilsack	jvilsack@summitcarbon.com	Summit Carbon Solutions, LLC
Amelia	Vohs	avohs@mncenter.org	Minnesota Center for Environmental Advocacy
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources
Alan	Whipple	sa.property@state.mn.us	Minnesota Department Of Revenue
Jonathan	Wolfgram	Jonathan.Wolfgram@state.mn.us	Office of Pipeline Safety