

## Staff Briefing Papers

**Meeting Date** April 17, 2025

**Agenda Item 2 \*\***

**Company** Summit Carbon Solutions, LLC

**Docket No.** IP-7093/PPL-22-422

**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**

**Issues** Should the Commission reconsider its February 21, 2025, Order Adopting the Administrative Law Judge Report as Modified, Finding the Environmental Impact Statement Adequate, and Issuing a Route Permit with Conditions?

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### ✓ Relevant Documents

#### Date

Summit Carbon Solutions – Reconsideration – Answer to Petition	03/24/2025
CURE – Reconsideration (7 parts)	03/13/2025
PUC – Erratum Notice	03/10/2025
PUC – Order – Order Adopting ALJ report as modified, FEIS, and Issuing a Route Permit with Conditions	02/21/2025
PUC – Staff Briefing Paper	12/06/2024
OAH – Report – Findings of Fact, Conclusions of Law, Recommendations	11/04/2024

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

## STATEMENT OF ISSUES

Should the Commission reconsider its February 21, 2025, Order Adopting the Administrative Law Judge Report as Modified, Finding the Environmental Impact Statement Adequate, and Issuing a Route Permit with Conditions?

## PROJECT DESCRIPTION

Summit Carbon Solutions, LLC (Summit) filed a pipeline routing permit application with the Minnesota Public Utilities Commission (Commission) to construct approximately 28.1 miles of 4-inch carbon steel pipeline and associated facilities to transport captured carbon dioxide (CO<sub>2</sub>) from the Green Plains Ethanol Plant located near the City of Fergus Falls in Otter Tail County, Minnesota to the Minnesota—North Dakota border south of the City of Breckenridge in Wilkin County, Minnesota (Otter Tail to Wilkin Project). Summit intends for the pipeline to connect to another proposed pipeline network in North Dakota, which would transport the CO<sub>2</sub> sourced from Minnesota to permitted Class VI injection wells.

## PROCEDURAL HISTORY

On September 12, 2022, Summit filed a route permit application with the Commission for its proposed Otter Tail to Wilkin CO<sub>2</sub> Pipeline Project (Project).

Between September 2022 and November 2024, the route permit application was reviewed pursuant to the procedural requirements set forth in Minn. Stat. § 216G and MN Rule chapters 4410 and 7852. These requirements included: public information and environmental impact statement (EIS) scoping meetings that included a written comment period; the preparation of a draft environmental impact statement (DEIS); separate public information meetings to receive comments on the DEIS including a written comment period; preparation of a Final EIS which responded to the comments received on the DEIS; public and evidentiary hearings conducted by an administrative law judge from the Office of Administrative Hearings in accordance with Minn. R. Ch. 1405, including a written comment period; findings of fact, conclusions of law, and recommendation prepared by an administrative law judge (ALJ Report), and an exception period on the ALJ Report.

As ordered by the Commission, the EIS analyzed three routes:

- applicant's proposed route as amended;
- CURE alternative route 2; and
- CURE alternative route 3

On December 12, 2024, the Commission held an agenda meeting concerning this docket.

On February 21, 2025, the PUC issued an Order permitting the project.

On March 10, 2025, the PUC filed an erratum notice for the Order published on February 21, 2025.

On March 13, 2025, CURE filed a petition for reconsideration.

### STATUTES AND RULES

Under Minn. Stat. § 216B.27 and Minn. R. 7829.3000:

- A party or a person aggrieved and directly affected by a Commission decision or order may file a petition for reconsideration within 20 days of the date the decision or order is served. Other parties to the proceeding may file answers to the petition within 10 days of the petition's filing. Replies to answers are not permitted unless specifically authorized by the Commission.
- A petition for rehearing, amendment, vacation, reconsideration, or re-argument must specifically set forth the grounds relied upon, or errors claimed on which the Commission's decision is unlawful or unreasonable.
- The Commission has the authority to decide a petition for reconsideration with or without a hearing or oral argument. The Commission may reverse, change, modify, or suspend its original decision if it finds its decision unlawful or unreasonable.
- Any application for rehearing or reconsideration not granted within 60 days from the date of filing shall be deemed denied.
- A second petition for rehearing of a Commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied will not be entertained.

Minn. Stat. § 216B.25 provides that:

The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

When it reviews petitions for reconsideration, the Commission typically reviews whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.

### PETITION FOR RECONSIDERATION<sup>1</sup>

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<sup>1</sup> CURE, [Reconsideration](#), 03/13/2025.

On March 13, 2025, CURE filed a petition for reconsideration of the Commission's February 21, 2025, Order Adopting the Administrative Law Judge Report as Modified, Finding the Environmental Impact Statement Adequate, and Issuing a Route Permit with Conditions. CURE stated that the Order had factual errors, as the Commission did not correctly consider the pipeline routing statutes and rules, as well as the Minnesota Environmental Policy Act.

Staff summarized new information provided in CURE's petition for reconsideration below.

#### South Dakota Law Change

CURE stated that South Dakota passed a law banning the use of eminent domain for carbon dioxide pipelines. CURE contended that the law change in South Dakota impacts the project's viability in Minnesota, as Summit has indefinitely delayed its permitting process in South Dakota.

CURE asserted that the Minnesota segment is in peril as the current project route runs through South Dakota and North Dakota before connecting to the permitted line in Minnesota. CURE wrote, "Because the capture points in Minnesota and North Dakota cannot connect to the injection wells in North Dakota without passing through South Dakota under the Applicant's current plan, the Order as it stands now is an approval of a pipeline to nowhere."

#### Federal Regulations

Under the Biden Administration, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released a *Notice of Proposed Rulemaking* (NPRM) regarding carbon dioxide and other hazardous pipelines. The NPRM contained updated rules and regulations for comment. The Trump Administration issued a presidential memorandum before the NPRM could be published in the Federal Register, which halted rulemaking until administrative approval is obtained.

Before the Trump Administration took office, a copy of the NPRM was published. CURE shared concerns that in comparison to the NPRM, the Commission's Order established weak standards. Specifically, CURE highlights the shortcomings of the EIS dispersion modeling in comparison to the emergency planning radius of two miles from the centerline of all CO<sub>2</sub> pipelines, as recommended in the NPRM. CURE wrote,

The Order has adopted, and deemed adequate, conclusions in the EIS stating that the maximum impact distance at which CO<sub>2</sub> concentrations could reach levels that are immediately dangerous to life and health (40,000 parts per million) is 617 feet from the pipeline. The Order further accepts that concentrations at which short-term exposures should not exceed 15 minutes (30,000 ppm) will not occur beyond 701 feet. By contrast, PHMSA's NPRM proposes a significantly wider emergency planning radius of two miles which would extend outward in either direction from the centerline of all CO<sub>2</sub> pipelines. Two miles is 10,560 feet, approximately 17 times further than deemed safe by the

Order.<sup>2</sup>

CURE also wrote that the NPRM directly contradicts other findings by the ALJ. They argued that the EIS and ALJ cited compliance with current federal standards as sufficient, whereas the NPRM demonstrates that these standards are insufficient. As a result, CURE believes that while the rulemaking has been paused for the NPRM, it does not change the fact that the NPRM strongly suggests that CO<sub>2</sub> pipelines operating under the current rules are not sufficiently safe. As a result, the burden for health and safety for the Project falls entirely upon the Commission.

CURE suggested that the Commission reconsider its Orders granting the routing permit and decline to consider any other applications for CO<sub>2</sub> pipelines until PHMSA's rulemaking is completed, or at the very least, consider rerouting the pipeline to avoid human habitations within the emergency planning zone (2 miles) as defined in the NPRM.

CURE is also concerned with the methodology used in the CO<sub>2</sub> plume modeling presented in the EIS. Specifically, air testing after the Sartartia, Mississippi incident found concentrations of CO<sub>2</sub> approaching 30,000 ppm in a building more than a mile from the release point.

#### Department's Expert

CURE asserted that the consultants with whom the Department of Commerce relied on for the EIS dispersion modeling may have lacked the necessary experience. They cited the consultants' brief resume and lack of interaction with PHMSA, as shown in the agency's responses to their FOIA requests, as evidence of the consultants' inexperience. As a result, CURE questions the validity of the EIS and the Commission's determination on its adequacy.

#### Errors in Order

CURE contended that the Order erred in approving the ALJ's assumption that the Commission lacks the authority to deny a route permit without a certificate of need. The ALJ's approach has the potential to elevate private interests over public interests if the Commission cannot deny a route permit. CURE also stated that the claim that the Commission cannot deny a license is a violation of the Minnesota Environmental Rights Act, which allows permits to be invalidated. CURE also suggested that the adoption of the ALJ's interpretation is counter to what is required of the Commission under MEPA.

In applying MEPA to this docket, CURE claimed the Commission erred. They argued that MEPA prohibits the Commission from moving forward with the pipeline, as a more feasible and prudent alternative exists using alternative technologies. They disagreed with the ALJ and the Commission, which found that the alternative technology would not serve the Project's purpose. CURE also argued that MEPA does not allow for the Project to be segmented. Instead, they stated that MEPA requires a review of the entire Midwest Carbon Expressway Project's potential footprint in Minnesota.

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<sup>2</sup> CURE, [Reconsideration](#), 3/31/2025, p. 5.

### Adequacy of EIS

In addition to the Commission's decision violating MEPA, CURE contends that the EIS is inadequate for many of the reasons already highlighted, including: the testimony of CURE's witnesses which stated that more study is necessary in the EIS to ascertain the project's impact, concerns the pipeline rupture modeling lacks credibility based on the consultants' experience and considering the new information included in the NPRM released by PHMSA. CURE alleged that EERA and the Commission relied on unsupported sources to reach a flawed conclusion concerning the adequacy of the EIS.

CURE further argued that the Order and the EIS do not adequately account for the use of captured CO<sub>2</sub> for enhanced oil recovery (EOR) in North Dakota. CURE is concerned with public statements from representatives of Summit stating that they are open to the use of CO<sub>2</sub> for enhanced oil recovery in other states. Despite these public quotes from Summit representatives, the Commission adopted language stating that the project, being used for EOR, is too speculative for consideration.

Lastly, CURE stated that MEPA requires the EAW to include an assessment of water resources available for appropriation when a project under review requires a groundwater appropriation permit from the DNR. They contended that the EIS did not include a comprehensive assessment of available water resources, as required by MEPA.

### Selection of Route

CURE found fault with the route the Commission selected (RA-South). They argued that a no-action alternative would have the fewest negative impacts. However, between the routes, the RA-North would be the least impactful, as it would have fewer residents within 1,600 feet of the centerline, would parallel more existing right-of-way, resulting in fewer impacts on sensitive lands, and cross fewer surface waters.

## **DEPARTMENT OF COMMERCE RESPONSE<sup>3</sup>**

The Department of Commerce (Department) supported the denial of CURE's petition for reconsideration of the Commission's determination that the EIS is adequate. They stated that CURE relied on flawed arguments that the Commission had previously rejected, as well as new and untimely evidence. Instead, the Department believes that the Commission's decision was well-reasoned.

### Record is Closed

The Department stated that the record is closed and the attempt to submit new evidence is untimely. They argued that consideration of new evidence at this point, would prejudice the other parties. As a result, the Commission should reject the evidence and deny the petition. The Department asserted that Minnesota law closes a contested case record with arguments and exceptions. A decisionmaker cannot consider information or evidence that is not part of the

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<sup>3</sup> DOC, [Opposing Answer](#), 03/24/2025

record. The Department quotes an Order from a previous docket<sup>4</sup> concerning a similar issue. The Order stated,

Filing substantial new evidence after these steps have taken place is akin to retrying the rate case without an evidentiary hearing process or record development. Xcel's new evidence, similar in kind to an initial rate case filing on the issues raised, has not been subject to scrutiny, record development, or evidentiary hearings, as is required in rate cases under Minn. Stat. § 216B.16, subd. 2 (b). And, it is clear that the parties to this case would vigorously challenge the veracity of the filings and their claims if given the opportunity to do so.

### EIS Adequacy

The Department asserted that the Commission should not find the EIS inadequate by relying on evidence that is untimely. They wrote that CURE is mistaken in asserting that the information from the federal rulemaking process and the dispersion modeling consultants' experience is evidence that the EIS is inadequate.

The Department argued that the federal rulemaking process cites a 2011 study concerning a different project with different attributes (size of pipeline, topography, and building distribution). In comparison, the modeling done by the Department is specific to the pipeline and area of concern in Minnesota. As a result, the Department maintained that the site-specific study should carry the most weight.

The Department stated that the consultant and subcontractor collectively had more than three decades of experience in pipeline integrity and modeling expertise. The ALJ also found that the Department's consultant had extensive experience. Furthermore, the consultant utilized industry-standard software and computational fluid dynamics analysis to conduct its modeling.

The Department stated that the Commission should consider the evidence submitted by CURE as untimely and decline CURE's petition for reconsideration.

## **SUMMIT CARBON, LLC<sup>5</sup>**

### Commission Review

Summit argued that the Commission had contemplated the regulatory landscape in other states. The action of South Dakota does not impact the record in Minnesota concerning the permitting of their pipeline. South Dakota has a separate regulatory jurisdiction from Minnesota. Summit further argued that CURE had presented a similar argument to the Commission previously when a stay was pending in North Dakota, which the Commission

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<sup>4</sup> N. States Power Co.'s Appl. for Auth. to Increase Elec. Serv. Rates, Docket No. E-002/GR21-630, ORDER DENYING PETITION FOR RECONSIDERATION, DENYING PETITION FOR CLARIFICATION, & GRANTING CLARIFICATION at 4 (Oct. 6, 2023) (eDocket No. [202310-199422- 01](#)).

<sup>5</sup> Summit, [Reconsideration – Answer to Petition for Reconsideration](#), March 24, 2025.

rejected.

#### PHMSA

Summit stated that the PHMSA's proposed rules, which CURE relied on in its filing, were never adopted, withdrawn from the PHMSA's website following presidential action on January 20, 2025. Additionally, the FEIS and ALJ report stated that the Applicant would implement public and emergency response awareness programs and would comply with new PHMSA regulations if established.

#### EERA's Consultant

CURE previously challenged the consultant's qualifications. The Commission had considered CURE's concerns regarding the consultant, as they were asserted during the post-hearing reply period, and the FOIA responses do not suggest any proper grounds for reconsideration.

#### The Order is Lawful

Summit wrote that the Commission's decision and Order were well-reasoned and consistent with Minnesota Law. Whether or not the Commission has the authority to deny the permit, it issued a route permit because the criteria were met. Summit also found the ALJ Report was consistent with the law.

Summit took issue with CURE's continued assertion that the project was improperly segmented. Summit argued that the Commission had previously ruled on this question and found that the entire Midwest Carbon Express Project was outside the scope of the EIS as it was not included in the present proposal. As a result, Summit wrote that CURE's argument against segmentation remains unpersuasive.

Summit also argued that, despite CURE's claim, water appropriation and water resource availability were studied in the EIS. If water appropriation is necessary for testing, dust control, or other activities related to the Project, Summit will be required to obtain a permit from the DNR or any other relevant entity for this project. Summit argued that this issue was raised during the proceeding and considered by the Commission.

Summit stated that the Commission has determined the adequacy of the EIS. The Commission considered CURE's claims at that time, and they do not present any new evidence or legal errors that would compel the Commission to revisit its decision concerning this docket.

Despite CURE's contention that RA-South is not the best route choice, the EIS concluded that the impacts were similar in nearly every category across the three route alternatives. The Commission considered the benefits and effects of all the routes after applying the routing criteria and selected RA-South. CURE's concerns concerning RA-South were raised in the proceeding, subject to review, and accounted for in the Commission decision-making. CURE does not raise any new factual concerns or issue concerning the route selected by the Commission. Summit recommended that the petition for reconsideration be denied.



## DISCUSSION

If the Commission determines that new evidence can be considered despite the Department's objections, staff has highlighted that evidence in the discussion below for Commission consideration.

### South Dakota

On March 6, 2025, the Governor of South Dakota [signed House Bill 1052](#), which would prohibit the use of eminent domain to "acquire right-of-way for, construct, or operate a pipeline for the preponderant purpose of transporting carbon oxide." In response to the law, Summit issued a [press release](#). Since the law came into effect, [Summit asked the South Dakota Public Utilities Commission for an indefinite pause](#) in its proceeding so the Project schedule can be reviewed and adjusted.

During the December 2024 agenda meeting, the Commission considered the progress of permits in other states and their implications for the Project in Minnesota. The Commission included a special permit condition that made Summit's pipeline in Minnesota contingent upon its ability to obtain permits in North Dakota. The Commission may wish to get additional clarification from Summit regarding the impact of the new law in South Dakota on the permitted project in Minnesota.

### PHMSA – Proposed Rulemaking

On January 15, 2025, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a press release regarding a Notice of Proposed Rulemaking (NPRM) for carbon dioxide pipelines. PHMSA had released an initial draft of the NPRM. The NPRM was conducted in part due to a CO<sub>2</sub> rupture near Satartia, MS. The EIS provided a comparison table of the Project in Minnesota and the project that ruptured in Mississippi. The table is included here for your reference:

Factor	Denbury Delhi Pipeline near Satartia, MS, that Ruptured in 2020	Proposed Project
Pipeline Diameter, inches	24	4
Topography	The rupture occurred in an area of steep topography.	The project would not cross areas of steep topography.
CO <sub>2</sub> Dispersion Model	Denbury did not correctly model impacts of an accidental release on the Village of Satartia.	The applicant conducted its dispersion modeling after PHMSA issued an updated nationwide advisory bulletin.
Public Awareness Program	Satartia was not included in Denbury's Public Awareness Program or considered in any emergency response plans.	EERA staff recommends as a special permit condition that the applicant provide a public education plan for Commission review prior to beginning construction. The public education plan must include specific safety information for neighboring landowners including what to do in case of a rupture (see Section 8.5.3).
Emergency Responder Awareness Program	Emergency responders did not know of the presence of the CO <sub>2</sub> pipeline.	The applicant has initiated coordination with emergency responders in Otter Tail and Wilkin Counties. EERA staff recommends as a special permit condition that the applicant prepare a plan in coordination with emergency responders for Commission review prior to beginning construction. The plan must include specific equipment, training, and reimbursement that would be provided to emergency managers. The plan must also list the names of the emergency responders (see Section 8.5.3).
PHMSA Regulations	Pipeline was constructed before PHMSA issued an updated nationwide advisory bulletin to all pipeline operators underscoring the need to plan for and mitigate risks related to land movements and geohazards that pose risks to pipeline integrity like the 2020 incident in Satartia.	The project would be constructed after PHMSA issued an updated nationwide advisory bulletin to all pipeline operators underscoring the need to plan for and mitigate risks related to land movements and geohazards that pose risks to pipeline integrity like the 2020 incident in Satartia.
Potential New PHMSA Regulations	Pipeline was constructed before PHMSA initiated rulemaking for updates to CO <sub>2</sub> pipeline safety regulations.	Project construction timing with respect to planned PHMSA updates to its CO <sub>2</sub> pipeline safety regulations is unknown, meaning pipeline construction might or might not incorporate these regulations.

<sup>6</sup> DOC EERA, [EIS](#), 07/31/2024, p. 8-7.

After reviewing the NPRM, CURE referenced a two-mile emergency planning area suggested in the proposed rule and compared it to the dispersion modeling conducted by EERA's consultant. CURE uses the NPRM two-mile emergency planning area set out in the proposed rules to question the veracity of the modeling included in the EIS.

The NPRM stated that if a 6-inch pipeline carrying CO<sub>2</sub> ruptured, it would be possible to detect concentrations that were immediately dangerous to human health and life (40,000 ppm) at distances of up to nearly half a mile from the release point. The second pipeline used in the NPRM had an outer diameter of 20 inches or larger. If this larger pipeline were to rupture, concentrations of 30,000 ppm could be found within about a two-mile radius of the rupture.<sup>7</sup>

In contrast, the pipeline permitted in this project will have an outer diameter of 4.5 inches. The modeling in the EIS showed that the most damaging impact distance of a CO<sub>2</sub> rupture at 40,000 ppm was calculated to be 617 feet. The distance that 30,000 ppm could reach would be 701 feet, and the distance for the concentration of 15,000 ppm would be 910 feet.

Concentration of CO <sub>2</sub>	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
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

8

The NPRM was not published in the Federal Register. A new administration was elected and halted regulatory actions across federal agencies. Since the carbon dioxide rules did not pass through the rulemaking process, it is not possible to determine the final rules.

The Commission may be limited in its ability to place safety standards on the construction of pipeline projects. PHMSA has preemption authority. If the Commission were to set a standard for the pipeline project, a federal waiver may be required. Additionally, [216G Subd. 3 \(a\)](#) states: "The Public Utilities Commission shall adopt rules governing the routing of pipelines. The rules apply only to the route of pipelines and may not set safety standards for the construction of pipelines."

<sup>7</sup> CURE, [Other – Attachment B](#), 03/13/2023, pp. 105 – 107.

<sup>8</sup> DOC EERA, [EIS](#), 07/31/2024, p. 8-15.

Despite the Commission's limited ability to establish safety standards for pipeline construction, it may be appropriate for the Commission to ask the Applicants what, if any, of the elements discussed in the NPRM they plan to incorporate into their Project. Furthermore, asking Summit what lessons were learned from the pipeline rupture near Sartoria, MS, and how those lessons will be incorporated into Summit's construction and operation of its Project, should it be built.

#### EERA Consultant

CURE had previously challenged the experience of EERA's consultants, who had performed dispersion modeling during the permitting process and incorporated into the EIS. During the evidentiary hearing process, CURE supplied an expert witness on modeling, whom the ALJ found to be making "superficial criticisms of the dispersion modeling and is due little weight," ultimately concluding that the EIS was adequate. CURE provided new documentation (FOIA Request of PHMSA), which was used to question the qualifications of the contractor hired by EERA to do the dispersion modeling, the EIS relied upon for this Project. While the FOIA provides new information, staff does not believe it materially alters the Commission's conclusion that the EIS is adequate.

#### Staff Analysis

Staff asserts that CURE has not demonstrated that the Order is unlawful or unreasonable and that reconsideration is appropriate. The Commission considered the benefits and impacts of RA-South and alternative routes, applied the applicable law, and appropriately issued a route permit. Many of CURE's concerns were previously raised during the review process and considered by the Commission. The Commission approved several Special Permit Conditions that were responsive to the concerns raised. In its petition for reconsideration CURE has submitted new or additional evidence that, even if considered by the Commission, does not establish that reconsideration is appropriate. For reference, staff has provided the special permit conditions from the route permit as Attachment A to these briefing papers.

### **DECISION OPTIONS**

1. Deny the Petition. (Summit, Department)

*Or*

2. Reconsider the February 21, 2025 Order as corrected in the March 10, 2025 erratum notice, and modify the Order as follows. (Staff's interpretation of CURE)

*[If the Commission reconsiders the Order, consider the following further actions]*

#### Route Permit

- A. Rescind the permit. *[If 2.A is selected, choose i, ii, or iii]*

- I. Find that the environmental impact statement is inadequate.

Rescind Ordering Paragraph 3 and reject the ALJ's findings and conclusions that are inconsistent with this finding. *[If 2.A.i is selected, also consider 2.D below]*

Or

- II. Find that issuing a permit for the Project would significantly affect the quality of the environment and is likely to cause pollution, impairment, or destruction of natural resources in the state, and that the alternative technologies identified in the EIS are feasible and prudent alternatives to achieve the project's purpose. Reject the ALJ's findings and conclusions that are inconsistent with this finding, including the findings regarding the project's net effect on greenhouse gas emissions and the evidence and likelihood that the project will be used for enhanced oil recovery.

Or

- III. Reject the ALJ's findings 362 and 364 regarding the Commission's authority to deny a permit.

Or

B. Amend section 9.18 of the permit as follows:

The Permittee must obtain all the necessary permits to build a pipeline and sequester CO<sub>2</sub> in North Dakota **and to build any pipeline segments in South Dakota necessary to connect the permitted Minnesota route to the sequestration site in North Dakota.**~~and~~ The Permittee must provide documentation that it has commenced construction on both projects in North Dakota **and the project in South Dakota** in the plan and profile filing before beginning construction in Minnesota. If at any time during construction of either project in North Dakota **or South Dakota** the Permittee receives an order from a Federal regulatory agency, a North Dakota **or South Dakota** regulatory agency or a court with appropriate jurisdiction to cease construction in North Dakota **or South Dakota**, the Permittee must immediately stop construction in Minnesota, secure the site and notify the Commission. The Permittee may not recommence construction again in Minnesota until such order ceasing construction is lifted or the Permittee has obtained permission from the Commission to recommence construction in the

meantime.

- C. Amend the permit to authorize the RA-North route instead of RA-South and reject the ALJ's findings and conclusions that RA-South is the best route.

Environmental Impact Statement Modifications *[Consider only if 2.A.i is selected]*

- D. Request that EERA modify or supplement the EIS to include the following:
  - I. Additional study of human health and safety impacts posed by carbon dioxide pipelines, consistent with the Pipeline and Hazardous Materials Safety Administration's findings in its January 10, 2025 Notice of Proposed Rulemaking on "Pipeline Safety: Safety of Carbon Dioxide and Hazardous Liquid Pipelines"
  - II. Additional dispersion modeling to identify the potential impacts of a CO2 pipeline rupture on human health, conducted by a qualified expert
  - III. Study of the entire Midwest Carbon Express pipeline Summit plans to propose in Minnesota
  - IV. Further study of water resources available for appropriation
  - V. Additional study of soils, water resources, geohazards, aquifers, and cultural resources along all routes included in the scoping document
  - VI. A complete analysis of all three routes included in the scoping document

*And*

- 3. Delegate authority to the Executive Secretary to modify the route permit to reflect the changes adopted in this Order and to correct any typographical or formatting errors, and to issue the amended permit.

*And*

- 4. Delegate authority to the Executive Secretary to modify the ALJ Report consistent with the decisions made herein.

Staff recommendation: 1. Deny the Petition



Attachment A  
Special Permit Conditions  
Summit Carbon Pipeline

On February 21, 2025, and modified on March 10, 2025, the Commission issued a route permit<sup>9</sup> for Summit's preferred route based on the record. As part of the route permit, the Commission included the following special permit conditions:

**Human Trafficking Prevention.** The Permittee shall provide its Human Trafficking Prevention Training for Commission Review 30 days before the submittal of the Plan and Profile.

**Pipeline and Hazardous Materials Safety Administration (PHMSA) Emergency Plan.** The Permittee shall file with the Commission the Emergency Response Plan that is filed with PHMSA before the start of operations.

**Public Safety Filings.** The Permittee shall file the following information, developed in coordination with local emergency responders, for Commission Review 30 days before the submittal of the Plan and Profile:

1. Specific Equipment, training, and reimbursement to be provided to emergency managers.
2. List the names of the emergency responders and include a provision for updating contact information as needed.
3. Discussion on the feasibility of a "reverse 911" notice or other electronic notification system, such as Send Word Now, that goes out to landowners' telephones in the event of an emergency shutdown or rupture.
4. Identification of how the applicant would cover the costs of any repairs to public infrastructure or private property (including crops or livestock) that may occur during an accidental release.

**Public Education Plan.** The Permittee shall provide its public education plan for Commission review 30 days before the submittal of the Plan and Profile. The public education plan should include specific safety information for neighboring landowners (residences within a minimum of 1,000 feet of the Project), including instructions on what to do in the event of a rupture.

**Noise Walls.** The Permittee shall provide documentation of coordination with residents located within 1,320 feet of horizontal direction drilling (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.

**Minnesota Environmental Construction Plan.** The Permittee shall provide the revised Minnesota Environmental Construction Plan to the Commission 30 days prior to the Plan and

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<sup>9</sup> PUC, [Order – Erratum Notice](#), March 10, 2023.



Profile submittal.

**Fergus Falls Fish and Game Club.** The Permittee shall provide documentation of coordination with the Fergus Falls Fish & Game Club to minimize visual and noise impacts during construction.

**Geohazard Assessment Reporting.** The Permittee 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.

**Archeological Resources Consultation.** The Permittee 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 the NRHP eligibility of the resources are warranted, and develop appropriate avoidance or treatment plans.

**Beach Ridge Area Plan.** The Permittee 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.

**HDD Unintentional Release.** The Permittee shall conduct unintentional release evaluations for waterbody crossings proposed to be installed via HDD to ensure the soils are amenable to HDD. The Permittee shall develop an inadvertent return plan describing the actions necessary for monitoring, containment, and clean up from an inadvertent release. The inadvertent return plan shall include the safety data sheets for any chemicals approved as additives for use during HDDs.

**Vegetation Management Plan.** A Vegetation Management Plan (VMP) should be prepared in consultation with the Vegetation Management Plan Working Group (VMPWG), a multi-agency group led by the Minnesota Department of Commerce, Energy Environment Review and Analysis 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.

**Erosion and Sediment Control.** The Permittee will use wildlife-friendly erosion and sediment control best management practices that contain biodegradable netting with natural fibers. The Permittee must follow MnDOT's 2020 Standard Specifications for Construction for rolled erosion control materials that specify only natural fibers with no plastic mesh to be used.

**Exploratory Borings.** The Permittee 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.

**CO2 Detectors.** The Permittee shall make a good faith effort to discuss with landowners the feasibility and efficacy of providing indoor and/or outdoor CO2 detectors to residences within 1,000 feet of the Project. After this discussion, if a landowner desires CO2 detectors on their property, the Permittee shall provide them. The Permittee must file the result of these discussions for review by the Commission 30 days prior to the submittal of the Plan and Profile. The discussion must, at minimum, (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; and, (3) the potential false positive or negative readings.

**Captured Volume.** The Permittee shall file with the Commission the captured CO2 volume as per Part II of IRS Form 8933 (or successor forms) that are periodically submitted to the Internal Revenue Service for the purpose of claiming Section 45Q carbon capture, storage and utilization tax credits or any successor tax credits ("45Q Reports").

**Release Impact Coordination.** The Permittee shall 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.

**Other Permits Required.** The Permittee must obtain all the necessary permits to build a pipeline and sequester CO2 in North Dakota and must provide documentation that it has commenced construction on both projects in North Dakota in the plan and profile filing before beginning construction in Minnesota. If at any time during construction of either project in North Dakota the Permittee receives an order from a Federal regulatory agency, a North Dakota regulatory agency or a court with appropriate jurisdiction to cease construction in North Dakota, the Permittee must immediately stop construction in Minnesota, secure the site and notify the Commission. The Permittee may not recommence construction again in Minnesota until such order ceasing construction is lifted or the Permittee has obtained permission from the Commission to recommence construction in the meantime.

**Land Use Agreements Secured.** The Permittee shall secure all land use agreements before construction and shall notify the Commission when all agreements have been secured. The Permittee shall notify all landowners with whom it has not yet secured an easement as of December 12, 2024, that the issuance of the permit does not change the fact that the Permittee does not have eminent domain authority or grant to the Permittee greater rights associated with land acquisition.

**Crop Damage Compensation.** The Permittee must compensate landowners or tenants, as appropriate, for verified crop damage and/or yield losses directly caused by the Project. For any disputes as to the existence, amount, and/or cause of such crop damages and/or yield losses

that cannot be resolved through the use of good faith negotiations, the Permittee shall offer mediation with an independent mediator to be paid at the Permittee's expense.

**Wilkin County Ditch #35.** If the Project is installed adjacent to Wilkin County Ditch (WCD) #35, the footprint shall be set back south 50 feet from daylight (crown) of the current channel to allow for future maintenance and/or improvements. The pipeline shall be installed at least six feet below the legal grade lines of WCD #35 if it intersects WCD #35 at any point.

**Project Segmentation Prohibition.** The Permittee shall at the time of the submitting of the plan and profile provide the Commission with a plan and profile of the right-of-way and the specifications and drawings for right-of-way preparation, construction, cleanup, and restoration for the full project. The Permittee may not segment the project into separate segmented construction schedules.

**Emergency Preparedness Reimbursement.** The Permittee shall compensate all local units of government for actual reasonable costs of training and equipment necessary for emergency preparedness associated with the pipeline facility.

**Independent Monitor.** The Permittee shall employ an independent monitor, who reports directly to EERA staff, to monitor the construction and restoration of the project. The Permittee shall bear the costs associated with the monitor.

**Financial Security.** The Permittee shall create and fund a sufficient financial security instrument(s) to protect against the failure to complete construction and fund decommissioning; and acquire and maintain General Liability and Environmental Liability insurance policies meeting coverage requirements.