

REBUTTAL TESTIMONY

OF

MARK MAPLE

ENERGY ENGINEERING PROGRAM

SAFETY & RELIABILITY DIVISION

ILLINOIS COMMERCE COMMISSION

ONE EARTH SEQUESTRATION, LLC

Application pursuant to the Carbon Dioxide Transportation and Sequestration Act for a Certification of Authority to Construct and Operate a Carbon Dioxide Pipeline and when Necessary to take Interests in Property as Provided by the Law of Eminent Domain

DOCKET NO. 23-0708

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1 **Q. Please state your name and business address.**

2 A. My name is Mark Maple and my business address is Illinois Commerce
3 Commission, 527 East Capitol Avenue, Springfield, Illinois 62701.

4 **Q. Are you the same Mark Maple who previously filed direct testimony in this**
5 **docket?**

6 A. Yes, I presented Staff Ex. 1.0 in this docket.

7 **Q. What did you recommend in your direct testimony?**

8 A. I recommended that the Commission deny One Earth Sequestration, LLC's ("OES"
9 or the "Company") request for a certificate of authority to construct, install, operate,
10 and maintain an approximately 7.34-mile-long intrastate carbon dioxide
11 transportation pipeline and related facilities ("OES Pipeline") pursuant to the
12 Carbon Dioxide Transportation and Sequestration Act ("CO₂ Act"), 220 ILCS 75/1
13 et. seq.

14 **Q. Have you changed your recommendation after reviewing the rebuttal**
15 **testimony presented by OES?**

16 A. No. For the reasons explained below I continue to recommend that the
17 Commission deny OES's request for a certificate of authority to construct, install
18 operate, and maintain the OES Pipeline.

19 **Q. Do you have any exhibits or attachments to your testimony?**

20 A. Yes. I have included the following attachments to my testimony:

21 Attachment A OES March 29, 2024, Supplemental Response to Staff data
22 request ("DR") MEM 1.25

23 Attachment B OES March 29, 2024, Supplemental Response to Staff DR
24 MEM 1.24

25 **Legislative Purpose and Sequestration Site**

26 **Q. OES witness Steve Kelly disagrees with your position that the OES Pipeline**
27 **does not satisfy the public interest, public benefit, and legislative purpose**
28 **of the CO₂ Act. (OES Ex. 1.5, 3-4.) How do you respond?**

29 A. I maintain my position from my direct testimony and continue to recommend that
30 the Commission deny the Application. As I explained in detail in my direct

31 testimony, in my non-legal opinion, the OES Pipeline is not consistent with the
32 public interest, public benefit, and legislative purpose of the CO₂ Act as required
33 by Section 20(b)(8). (Staff Ex. 1.0, 17-19.) Staff counsel will address this issue
34 further in briefs, including Mr. Kelly’s “plain reading” of the statute. (OES Ex. 1.5,
35 4-5.)

36 **Q. Mr. Kelly criticizes the extent of your experience with the CO₂ Act. How do**
37 **you respond?**

38 A. Mr. Kelly claims that “compared to the Public Utilities Act, Mr. Maple has very
39 limited experience working with this particular statute, [the CO₂ Act].” Id. at 4. It is
40 important to note that the CO₂ Act was enacted in 2011, making this a relatively
41 new statute. Further, Mr. Kelly fails to acknowledge that the CO₂ Act has rarely
42 been used, with only a few Illinois applicants to date. Despite this, I have now
43 testified in three out of the five proceedings that have been before this Commission
44 pursuant to the CO₂ Act. Mr. Kelly attempts to criticize my experience with the
45 CO₂ Act, but in turn, ignores my extensive, related experience as an engineer at
46 the Commission for the last 26 years. Therefore, Mr. Kelly’s attempt to discredit
47 my professional experience should be disregarded.

48 **Q. Mr. Kelly stated that since OES has executed landowner agreements for the**
49 **CO₂ injection sites, I should no longer be concerned about OES not having**

50 **a sequestration facility in place or having an uncertain endpoint. Do you**
51 **agree?**

52 A. No. First, I would note that although OES has apparently obtained all of the
53 necessary above-ground easements for Wells #1 and #2, respectively, the
54 Company has still not obtained all of the necessary underground pore space for
55 those wells. (Attach. A.) Additionally, executing landowner agreements for the
56 sequestration sites is only one of the several hurdles that OES faces in
57 constructing a sequestration facility. Mr. Kelly did not address my concern
58 regarding OES's inability to obtain the necessary permits and approvals for the
59 sequestration facility thus far. (Staff Ex. 1.0, 28.)

60 **Q. In your direct testimony, you noted that OES had not received every permit**
61 **and approval necessary to construct the sequestration facilities. Id. Is it**
62 **your opinion that OES will eventually obtain all the necessary permits and**
63 **approvals to construct the sequestration facilities?**

64 A. I cannot say with certainty that OES will eventually obtain all such permits and
65 approvals. OES has not had any updates to report on the status of its EPA Class
66 VI permit since its original response on November 28, 2023. (Attach. B.) Likewise,
67 OES has not had any updates to report on the status of the permit it must acquire
68 from the McLean County Board since OES reported the permit denial on January

69 22, 2024. Id. In fact, not a single OES witness mentioned this permit in rebuttal
70 testimony.

71 **Q. In your experience, is it common for the Commission to grant a certificate**
72 **for a pipeline that will be constructed to or from non-existent facilities?**

73 A. No. In my professional experience, when pipelines are planned between facilities,
74 such as production zones, refineries, pipeline terminals, storage facilities, or other
75 end users, the facilities already exist when a pipeline project is announced. In the
76 current proceeding, the source of the CO₂ is an *existing* facility. In contrast, the
77 sequestration sites are simply open land where CO₂ sequestration facilities are
78 *proposed* to be built. Because there is no certainty these end-point facilities will in
79 fact exist (since they currently do not), it would be both premature and unusual to
80 grant OES's Application.

81 In my opinion, OES must show that the endpoints of the Project are known in order
82 for this project to meet the public need standard set out in the CO₂ Act.
83 Specifically, OES should be able to provide the Commission with certainty that
84 there are determined endpoints and locations to sequester the CO₂ transported by
85 the Pipeline. Already, during the course of this proceeding, one of the three original
86 wells identified by OES to be a sequestration site has now been eliminated from
87 the Company's proposal. (OES Ex. 1.5, 1.) This supports both of my points that
88 the endpoints of the Project are in flux and that changes to these endpoints could

89 cause the route of the OES Pipeline to be altered. Without such certainty of
90 knowing where the physical facilities will be at both the starting and ending points
91 of the OES Pipeline, it is my opinion that there is no public need for the OES
92 Pipeline itself.

93 **Q. In his rebuttal testimony, Mr. Blakely suggests that requiring all permits for**
94 **the sequestration site before a CO₂ pipeline operator can receive a**
95 **Certificate could significantly increase the time needed to complete the**
96 **overall project, and during that time, substantial CO₂ emissions intended to**
97 **be sequestered by the project would continue to be emitted, which is**
98 **inconsistent with the purpose of the CO₂ Act. (OES Ex. 3.3, 3-4.) Do you**
99 **agree with this argument?**

100 **A.** No. This argument is unpersuasive. In my opinion, the Commission should not
101 rush approval of a project at the expense of the safety of Illinois citizens and other
102 statutory or compliance requirements. This is especially true given the fact that
103 the sequestration site will have limited pore space. The sequestration site has a
104 finite capacity of CO₂ that it can hold before it is full, at which time there will again
105 be CO₂ emissions to deal with. If the purpose of the project is to protect the
106 environment and to meet the needs of Illinoisans as OES proposes, the logical first
107 step should be for the Commission to take a careful, measured look at whether
108 and how OES will construct the project to ensure the safety of the public and

109 landowners affected by the pipeline. Staff counsel will address OES witness
110 Blakley's statement regarding the purpose of the CO₂ Act further in briefs.

111 I will also note that it is OES, not Staff, who chose the current timelines for obtaining
112 various permits and certificates. The CO₂ Act has existed since 2011, and I am
113 not aware of any reason why OES would have been unable to seek any relevant
114 local, state, and federal permits months or years in advance of this proceeding.
115 OES argues that withholding a certificate until all permits are received will increase
116 the time to complete the project and lead to continued CO₂ emissions; however,
117 OES fails to acknowledge that the cause of delay results from the Company's
118 decisions on when to pursue the necessary requirements for the Project.

119 The Commission has a statutory obligation to make specific findings as to all of the
120 requirements in the CO₂ Act which necessitates a thorough and careful review of
121 this Project; the Commission should not rush judgment on this Project to suit OES's
122 preferences and to meet OES's self-created timeline.

123 **Common Carrier Certificate**

124 **Q. OES witness Kelly states that "OES's position is that the CO₂ Act is a**
125 **complete and self-contained statute" and that the OES Pipeline does not**
126 **require a separate Common Carrier certificate. (OES Ex. 1.5, 8.) How do you**
127 **respond?**

128 A. As I stated in my direct testimony, I am advised by counsel that a plain reading of
129 the CO₂ Act does not absolve applicants from seeking other applicable and
130 required approvals from the Commission. (Staff Ex. 1.0, 34.) Staff counsel will
131 address this issue further in briefs. Id.

132 **Public Safety**

133 **Q. What safety concerns did you raise in your direct testimony?**

134 A. I stated that OES is currently developing its Emergency Response Plan (“ERP”),
135 which provides response procedures and integrated emergency preparedness for
136 all aspects of the OES carbon capture and storage system, including the OES
137 Pipeline. OES stated that it would not be providing drafts of its ERP to local
138 authorities and first responders until early 2025, meaning that the Commission will
139 not get to see the results of these efforts, nor have the opportunity to evaluate or
140 comment on the final ERP prior to the record being closed in this docket. In my
141 direct testimony, I raised concerns that the Commission is being asked to approve
142 the OES Pipeline without receiving any feedback from local governmental units
143 regarding the adequacy of the ERP, the amount of training offered by OES, the
144 amount of money that OES will spend purchasing critical emergency response
145 equipment, and other aspects of its safety planning. (Staff Ex. 1.0, 25-26.)

146 **Q. Has OES provided a draft of its ERP since you filed your direct testimony?**

147 A. Yes. OES's revised draft ERP was served to the parties as a supplemental
148 response to Staff Data Request MEM 1.10 on April 18, 2024.

149 **Q. Does the draft ERP address the concerns you detailed in your direct**
150 **testimony, such as the amount of training offered to local governmental**
151 **units by OES, or the amount of money that OES will actually spend**
152 **purchasing critical emergency response equipment for local governmental**
153 **units?**

154 A. No.

155 **Q. Has OES committed to purchase all the equipment that local first responders**
156 **and emergency service providers determine is necessary to respond to an**
157 **accidental CO₂ release on the Pipeline?**

158 A. No. Instead, OES witness Mark Ditsworth states that OES is still developing a list
159 of necessary equipment with the help of local agencies. (OES Ex. 2.6, 11.) He
160 further stated that OES plans to provide "basic equipment" that OES anticipates
161 that local response agencies might need. Id. Both Mr. Ditsworth and OES witness
162 Eric West state that OES will develop a plan and budget to address equipment and
163 training needs. (OES Ex. 2.6, 11; OES Ex. 6.0, 5.) However, it appears that OES
164 intends to have the final determination as to how much it will spend and what the
165 money will be spent on for supporting local government agencies in order to equip

166 first responders. OES has not committed to providing 100% of the funds
167 necessary to equip first responders. Specifically, Mr. Ditsworth states that OES
168 will be “*assisting* with reasonable, necessary equipment needs.” (OES Ex. 2.6, 23
169 (emphasis added).) Finally, as neither OES witness mentions a completion date
170 for the list of the basic equipment and the funding for the local government
171 agencies first responders, it appears that these decisions will occur after this
172 proceeding concludes. This, in turn, means that the Commission will not have any
173 assurances that first responders will be supplied with the necessary equipment to
174 ensure the safety of Illinoisans, should there be an accidental CO₂ release on the
175 Pipeline.

176 **Q. Have any local governmental units participating in this docket expressed**
177 **concern about the ability to obtain the equipment and training needed to**
178 **ensure the safety of Illinoisans?**

179 A. Yes. Ford County Witness Terry Whitebird, the Coordinator for Ford County
180 Emergency Management Agency and Local Emergency Planning Committee,
181 expressed his concerns about Ford County’s ability to acquire the necessary
182 equipment to respond to a CO₂-related emergency. (Ford County Ex. 1.0, 3-7.)
183 Mr. Whitebird provided both initial and ongoing cost estimates for various planning,
184 training, and equipment needs identified by Ford County. Id. at 3-4, 6-7. Mr.
185 Whitebird stated that it would be impossible for emergency response agencies in
186 Ford County to bear the costs of the electric vehicles that it deems as necessary.

187 Id. at 4. Mr. Whitebird further stated that the costs to obtain the necessary
188 emergency response equipment will be very high and budgetarily infeasible for the
189 local Ford County emergency response entities. Id. at 5. Mr. Whitebird additionally
190 opined that the Gibson Area Hospital has not planned or trained for a CO₂ event,
191 and that training and equipping for such an event will impose significant costs to
192 the rural hospital. Id. at 7. Mr. Whitebird recommends that if the Commission
193 approves the project, it should require One Earth to reimburse the counties, first
194 responder entities, and hospitals for the costs of emergency preparedness and
195 any costs associated with responding to an actual emergency. Id. at 10.

196 Save our Illinois Land (“SOIL”) witness Timothy A. Christensen, Jr., the District
197 Chief of the Saybrook Arrowsmith Fire Protection District (“SAFPD”) in McLean
198 County, Illinois, also expressed concern about his district’s ability to acquire the
199 necessary equipment to respond to a CO₂ related emergency. Mr. Christensen
200 quantified significant initial and ongoing costs for the equipment and staffing
201 resources needed for the SAFPD. (SOIL Ex. 6.0, 6-8.) In his opinion, the initial
202 cost of the necessary equipment and resources will be prohibitive for the SAFPD
203 to meet the minimum required standard to be prepared to respond to a CO₂ related
204 incident. Id. at 7. Mr. Christensen additionally opined that the local Gibson City
205 Hospital is not equipped for a mass casualty event. Id. at 8. In the event that the
206 Commission approves the OES Pipeline, Mr. Christensen recommends that the

207 Commission impose a requirement on OES to reimburse emergency districts and
208 hospitals for the costs of emergency preparedness on an annual basis. Id. at 11.

209 **Q. Did Ford County Witness Mr. Whitebird offer an opinion on whether OES has**
210 **provided adequate information to advise the Commission on how Ford**
211 **County's infrastructure and public safety will be affected by the Pipeline?**

212 A. Yes. Mr. Whitebird stated that OES has not provided sufficient information to
213 enable Ford County to fully assess the risks of the OES Pipeline and to prepare
214 for an emergency response. (Ford County Ex. 1.0, 1.) He further stated that:

215 [w]ithout a plan for review, we are unable to obtain and provide a
216 clear understanding of the effects on public safety in our area. We
217 have no way of ensuring that any of the fire departments, first
218 responders, ambulances or the hospital is adequately staffed or
219 equipped. As Ford County has primarily volunteer first responders,
220 it is impossible to know if any of the first responders would be able
221 to assist in enough time, nor with the equipment necessary. There
222 is no way to ensure than any first responders would be trained on
223 our emergency response before a rupture or leak occurred.

224 Id. at 9-10.

226 **Q. Did SOIL Witness Mr. Christensen offer an opinion on whether OES has**
227 **provided him with adequate information to advise the Commission on how**
228 **the Saybrook Arrowsmith Fire Protection District's infrastructure and public**
229 **safety will be affected by the Pipeline?**

230 A. Yes. Mr. Christensen stated that the SAFPD has not received any information on
231 a number of topics that are necessary for developing a response plan, including
232 locations of safety equipment, pipeline setbacks from habitable structures and
233 population centers, plume modeling, depth of pipeline, and soil types. (SOIL Ex.
234 6.0, 8-9). Without this information, SAFPD is unable to provide a clear
235 understanding of the effects on public safety in its area. Id. He further states that
236 SAFPD cannot ensure that any of the fire departments or the hospital is adequately
237 staffed; cannot ensure that any first responders would be trained for an emergency
238 response to a CO₂ leak before one occurs; and cannot ensure that responders
239 would be able to assist in enough time. Id.

240 **Q. After reviewing the intervenors' direct testimony and OES's rebuttal**
241 **testimony, have your concerns regarding public safety noted in your direct**
242 **testimony been alleviated?**

243 A. No, for all of the reasons stated above. Until OES either purchases or commits to
244 purchasing all of the equipment necessary for local governmental units, the local
245 governmental units are unable to determine if OES's safety budget is adequate to
246 equip and prepare first responders for an emergency on the Pipeline. The local
247 governmental units also need significantly more information about the safety risks
248 and OES's procedures to address those risks. Finally, the local governmental units
249 need upfront and ongoing training to be provided, and the training should be
250 provided at OES's expense.

251 The Commission is required by Section 20(b)(8)(A) of the CO₂ Act to consider “any
252 evidence of the effect of the pipeline upon the economy, infrastructure, and *public*
253 *safety presented by local governmental units* that will be affected by the proposed
254 pipeline route.” 220 ILCS 75/20(b)(8)(A) (emphasis added). Ford County and the
255 SAFPD qualify as local governmental units, and both parties have expressed
256 serious concern regarding public safety and the ability of OES to adequately
257 address the public safety concerns that have been raised. Therefore, in my
258 opinion, after reviewing the testimony by Ford County and the SAFPD, the local
259 governmental units have presented concerns regarding public safety that further
260 support that the Commission should deny OES’s application for a certificate of
261 authority.

262 Lastly, I note that the draft ERP was first served to the parties on April 8, 2024,
263 which is *almost six weeks after* direct testimony was due for intervenors; less than
264 three weeks prior to due date of rebuttal testimony for intervenors; and only about
265 six weeks prior to the evidentiary hearing in this docket. Further, a revised draft
266 ERP was circulated on April 18, 2024, just one week prior the due date for rebuttal
267 testimony of intervenors, and about four weeks prior to the evidentiary hearing in
268 this docket. The delay in providing the ERP to the parties limits the ability of all
269 affected local governmental units to meaningfully review the ERP, engage further
270 with OES as needed, and provide evidence relevant to Section 20(b)(8)(A) of the

271 CO₂ Act. Thus, I continue to recommend that the Commission deny OES's
272 application based on Section 20(b)(8)(A) of the CO₂ Act.

273 **Landowner Negotiations**

274 **Q. What percentage of the total necessary easements had OES acquired when**
275 **you filed your direct testimony on February 28, 2024?**

276 A. According to the February 26, 2024 update of its response to Staff DR MEM 1.28,
277 OES had not executed a single easement agreement with landowners. (Staff Ex.
278 1.0, 31.)

279 **Q. Has OES made any progress in obtaining easements since that time?**

280 A. Yes. According to the rebuttal testimony of OES witness Steve Kelly, the Company
281 has signed pipeline easement agreements with landowners along 62% of the total
282 length of the pipeline. (OES Ex. 1.5, 2.) Some of this percentage increase appears
283 to be explained by OES changing the scope of the project and eliminating Well #3
284 and the length of pipeline that extended to that well. Id. at 1.

285 **Q. Does OES's progress in obtaining easements eliminate your concerns**
286 **regarding the public's opposition to the Project and OES's potential use of**
287 **eminent domain?**

288 A. No. There are twelve additional public comments left on the Commission's
289 eDocket system since I filed direct testimony. Nine of these comments are in
290 opposition to the Project. Despite the fact that some landowners have signed
291 easement agreements, the Project continues to generate negative public
292 sentiment. Additionally, OES is still lacking easements for more than one-third of
293 the total length of the pipeline, which would be a considerable amount to take by
294 eminent domain. However, since OES was able to make significant progress in
295 signing easements over a relatively short period of time, it is my opinion that
296 negotiations are not at an impasse. Therefore, even if the Commission were to
297 approve the Project, in my opinion, OES has not demonstrated a need for eminent
298 domain given that future negotiations have the potential to yield voluntary
299 agreements. Staff counsel will address this issue further in briefs.

300 **PHMSA Regulations**

301 **Q. OES Witness Mark Ditsworth stated that you do not identify any specific**
302 **elements of the Pipeline and Hazardous Materials Safety Administration's**
303 **("PHMSA") rules for CO₂ pipelines that are insufficient. (OES Ex. 2.6, 5.)**
304 **Why did you not identify any specific rules that are insufficient?**

305 A. It is my opinion that question goes to the very heart of what the PHMSA rulemaking
306 is attempting to accomplish. Having participated in a rulemaking here at the
307 Commission, it is not obvious at the outset of the process what changes need to

308 be made to existing rules. The process requires legal and technical research,
309 solicitation of comments from all affected parties, and possibly expert testimony,
310 among other forms of input. From my experience, it is only after you go through
311 this process that you can get a full picture of what rules are inadequate and what
312 solutions exist to strengthen the rules in those areas. It is possible to
313 simultaneously understand that current rules are inadequate while not knowing
314 what specific changes need to be made to strengthen those rules. For example,
315 PHMSA stated in its press release that it was “initiating a new rulemaking to update
316 standards for CO₂ pipelines” and “conducting research solicitations to strengthen
317 pipeline safety of CO₂ pipelines” as a result of PHMSA’s investigation into the
318 Satartia, Mississippi incident. PHMSA Press Release
319 [https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-](https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures)
320 [protect-americans-carbon-dioxide-pipeline-failures](https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures). The Satartia incident made it
321 obvious that more comprehensive rules were needed, but PHMSA did not
322 immediately identify which rules needed to be strengthened or what changes
323 should be made. It is prudent that the decisionmakers gather all of the necessary
324 information through the rulemaking process before opining on what changes need
325 to be made to the current rules.

326 **Q. OES Witness John Godfrey suggests that because PHMSA has not repealed**
327 **its current rules or stopped its reporting and inspecting programs, it must**

328 **mean that the current rules are adequate to address the safety and**
329 **environmental threat posed by CO₂ pipelines. Do you agree?**

330 A. No. I have not indicated that the current rules do not improve pipeline safety; in
331 fact, it is my opinion that the rules do much to accomplish that goal. However, as
332 demonstrated by the rulemaking at PHMSA, in addition to the statements made by
333 PHMSA, there is more work to be done. It should be obvious that repealing the
334 rules with no new rules to replace them would be an absurd action, would
335 accomplish nothing, and would likely lead to a more dangerous pipeline operating
336 environment. Likewise, halting reporting and inspection programs would also
337 serve no logical purpose and would decrease overall safety. However, in my
338 opinion, and according to PHMSA, the current rules do not go far enough and are
339 insufficient. There may be some topics that need stronger parameters and there
340 may be some topics for which the current rules are silent but will need to be
341 addressed in the new rules.

342 The point is that two things can be true – the current rules are not sufficiently strong
343 or adequate *and* the current rules are better than no rules. In my opinion, during
344 the PHMSA rulemaking process, the safest option to protect the welfare of Illinois
345 citizens is to prevent more pipelines from coming online that will perhaps be
346 designed and constructed in a way that will be impossible to meet the new rules.
347 I also note that I have been informed by counsel that there is pending legislation

348 in Illinois regarding CO₂ pipelines, indicating the General Assembly is also
349 considering these issues.

350 **Q. OES Witness Mark Hereth states that you suggested that new PHMSA rules**
351 **could create a dangerous situation. (OES Ex. 7.0, 21.) Is that an accurate**
352 **characterization of your testimony?**

353 A. No. My direct testimony stated:

354 If this project moves forward prior to the rulemaking by PHMSA, OES
355 could construct and operate a pipeline that is later found to be non-
356 compliant with PHMSA's new rules, and therefore, could be deemed
357 unsafe to operate. To avoid this potentially dangerous situation, I
358 recommend that the Commission deny OES's Application on the
359 basis of safety concerns until such time that PHMSA completes its
360 rulemaking process.

361 (Staff Ex. 1.0, 24.) The danger does not come from the rules changing, but from
362 the Project being built and operated under the current rules – rules under which
363 PHMSA, charged with enforcement of those rules, has acknowledged to need
364 “significant[] strengthen[ing].”

365 **Q. Did you state that if PHMSA finalizes revised regulations for CO₂ pipelines,**
366 **none of those regulations will apply to OES, as Mr. Ditsworth claimed in his**
367 **rebuttal testimony (OES Ex. 2.6, 6)?**

368 A. Mr. Ditsworth provided no citation to my testimony, so it is unclear to which
369 statement he was referring. Regardless, it is a mischaracterization of my

370 testimony. Rather, I stated that I was concerned that if the OES Pipeline was built
371 before a rule change, the physical properties of the OES Pipeline may prevent it
372 from complying with the new rules. (Staff Ex. 1.0, 23.)

373 **Q. If PHMSA strengthens and improves its CO₂ pipeline rules after OES has**
374 **constructed the Pipeline, will OES be able to comply with all of PHMSA's new**
375 **regulations, as Mr. Ditsworth implies?**

376 A. It is impossible for Mr. Ditsworth to know whether OES will be able to meet and
377 exceed PHMSA's new regulations because the rulemaking proceeding has not
378 taken place yet. However, there are some scenarios where OES will likely be
379 unable to meet or exceed PHMSA's new regulations due to the nature of the
380 regulations. Setback distances and the materials used to construct the OES
381 Pipeline are two possible topics PHMSA could address in the rulemaking. I
382 previously testified that once the OES Pipeline is built, many of its characteristics
383 cannot be easily changed, such as location, thickness of the pipe wall, burial depth,
384 and even minimum setback distances from homes and structures. (Staff Ex. 1.0,
385 23-24.) It is therefore possible that OES could build its proposed OES Pipeline to
386 meet or even exceed current PHMSA regulations covering these matters, only for
387 PHMSA to issue a new rule shortly after construction is complete causing OES to
388 be out of compliance. PHMSA recognizes that new regulations could apply to
389 *replacement* scenarios for already-built pipelines; however, PHMSA did not
390 provide clarity regarding what portions of an already-existing pipeline would need

391 to comply in full with any new regulation. (PHMSA Meeting Day 1 Transcript,
392 <https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=1426>, 19) (“If it is a new
393 requirement that comes on, for instance, the design of this valve. It would apply to
394 any *new valve going forward*. . . .there are other *parts* of the code that are
395 retroactive.”) (emphasis added.)

396 **Conclusion**

397 **Q. What findings did you make in your direct testimony?**

398 A. I found that OES failed to meet all the criteria of the CO₂ Act regarding the issuance
399 of a certificate of authority.

400 **Q. Have your findings changed as a result of reading all of the testimony filed
401 to date in this proceeding?**

402 A. No, my findings remain unchanged.

403 **Q. What is your recommendation to the Commission?**

404 A. I continue to recommend that the Commission deny OES’s request for a certificate
405 of authority for multiple reasons:

406 1. OES does not satisfy Section 20(b)(8) of the CO₂ Act. The proposed OES
407 Pipeline is not a benefit to the citizens of Illinois nor in the public interest.

408 Without the sequestration facility identified and available, the endpoint of the
409 route is uncertain, and it is impossible to determine what the route's effect on
410 landowners will be. Specifically, the viability of the entire project is uncertain,
411 given OES's failure to obtain permits and land rights necessary to construct a
412 sequestration facility. Without a sequestration facility identified and available,
413 the endpoint of the OES Pipeline is unknown, and thus, the entire route is
414 uncertain;

415 2. OES's Application is inconsistent with the legislative purpose of the CO₂ Act as
416 set out in Section 5;

417 3. Per Section 20(b)(8)(A), the Commission must consider the evidence put forth
418 by Ford County and SAFPD, who both express concerns about the Project
419 related to public safety. Additionally, the McLean County Board has expressed
420 its own concerns regarding these issues and denied a permit necessary for the
421 completion of the Project. OES does not have a final ERP; the final ERP is
422 currently unavailable for comment by the local government units; and it will not
423 be available until after the statutory deadline. Additionally, OES does not have
424 a definitive budget for training and equipping local emergency response and
425 has also failed to commit to purchasing all of the equipment necessary for the
426 local first responders.

427 4. PHMSA has initiated a rulemaking to implement new regulations for CO₂
428 pipelines. It is expected that PHMSA will issue new rules for CO₂ pipelines
429 that address safety and environmental threats. Thus, to ensure that the OES
430 Pipeline is compliant with the anticipated new rules, the Commission should
431 deny OES's CO₂ pipeline application until PHMSA has completed its
432 rulemaking process.

433 However, if the Commission disagrees with my recommendation and issues a
434 certificate of authority to OES, I recommend that the Commission impose a
435 condition in its Final Order on OES obtaining all other permits and approvals
436 necessary for the construction and operation of the OES Pipeline prior to the start
437 of any construction. Additionally, the Order should be conditioned on OES
438 obtaining all necessary land rights and permits to construct the sequestration
439 facilities, as planned, prior to the start of any pipeline construction. (Staff Ex. 1.0,
440 36-37.)

441 **Q. Does this conclude your prepared rebuttal testimony?**

442 A. Yes, it does.