

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)	HP14-002
APPLICATION OF DAKOTA)	
ACCESS, LLC FOR AN ENERGY)	
FACILITY PERMIT TO)	POST-HEARING BRIEF
CONSTRUCT THE DAKOTA)	(Sioux Falls)
ACCESS PIPELINE)	

Comes now City of Sioux Falls (“City”) and files its Post-Hearing Brief.

City’s The Application for Party Status states as follows:

Although the pipeline is not proposed to be constructed within the Sioux Falls City limits or the projected 2035 growth area for the City, Sioux Falls holds an interest because the proposed pipeline is near the City landfill west of Sioux Falls and would also cross a city owned pipeline. The proposal would also cross the Lewis and Clark Rural Water System pipeline. The City is a member of Lewis and Clark and receives water from it.

Applicant’s proposed pipeline route is parallel to the west boundary of the Sioux Falls Regional Sanitary Landfill (Landfill). (Sioux Falls Exh. A). The Landfill is approximately 5 miles west of Sioux Falls and is outside the City’s 2035 growth area. (Sioux Falls Exh. A). The City owned pipeline referenced in the Application for Party Status is a landfill gas pipeline that lies near the west boundary of the Landfill. The City does not object to the route along the Landfill, but the features and fixtures at the Landfill need to be protected throughout the life of the Applicant’s project.

Joint Motion Re Stipulated Findings of Fact, Conditions and Exhibits.

City and the Applicant presented a Joint Motion at hearing, asking the Commission to accept and rely on stipulated Findings of Fact and Conditions

relating to the Sioux Falls concerns.¹ The Commission took the matter under advisement.

The stipulated Findings of Fact are specific to the City. They provide: (a) the legal description of the City's Landfill, (b) a brief description of the features and fixtures owned by the City at its Landfill, including a groundwater monitoring well, a shelterbelt, a fence, and the Landfill gas pipeline, (c) pertinent conditions on the permit issued by the Department of Environment and Natural Resources (DENR) to the City for its Landfill, and (d) City's position that it does not object to the pipeline.

The Joint Motion also includes stipulated Conditions that would apply in addition to general or "standard conditions." The Commission has not published a set of "standard conditions," but the stipulated Conditions assume the Commission would impose a statewide set of general conditions like it did in *Matter of Transcanada Keystone Pipeline, LP (HP09-001)*, subject to the evidence presented at hearing. As referenced in the Joint Motion, the Applicant has already agreed to such conditions in the rebuttal testimony of Joey Mahmoud.

The stipulated Conditions add conditions *specific to the City*. These Conditions require the Applicant to: (a) install the pipeline safely at appropriate depths and locations relative to *City owned* landfill features and fixtures, (b) bar Applicant's workers from obstructing access to the *City's*

¹ The Joint Motion also asked the Commission to consider two City of Sioux Falls exhibits. By the time the Motion was made, however, Exhibit A had already been admitted into evidence without objection. The City asks that Exhibit B (map of City Landfill in relation to Applicant's proposed pipeline) be admitted based on the stipulation.

Landfill, (c) avoid or protect a *City owned* monitoring well and *City owned* Landfill gas pipeline during construction, including contacting One-Call and maintaining barricades around the monitoring well, (d) *reimburse City* for damage to the City monitoring well if any damage occurs, (e) restore vegetation on *City owned property*, (f) prevent or minimize disturbance of the *City's Landfill gas pipeline*, (g) maintain appropriate distances between the *City's Landfill gas pipeline* and the proposed pipeline and (i) replace a *City fence*.

The Motion was presented at hearing. The other intervenors were given an opportunity to present evidence and have their objection heard regarding the stipulation. The stipulation was presented the morning of October 7; the hearing continued for another 2½ days. The Joint Motion did not foreclose other intervenors from presenting any evidence. The stipulated Conditions do not purport to create rights or impose any obligation on other intervenors. The obligations under the stipulated Conditions would be imposed solely on the Applicant. The benefits arising from the stipulated Conditions would pertain to City owned property, City employees, and use of the use of the City landfill.

Moreover, consent of all intervenors or parties is not required for the stipulated Conditions to be approved: “while an intervenor is entitled to present evidence and have its objection heard at the hearings on whether to approve a consent decree, it does not have the power to block the decree merely by withholding its consent.” *Steiner v. Marshall County* 1997 SD 109, 568 N.W.2d 627 (citing *Local Number 93 v. City of Cleveland*, 478 U.S. 501 (1986)). The stipulated Findings of Fact, Conditions, and Exhibit should be approved.

Lewis and Clark Rural Water System. The Applicant's project will cross the Lewis and Clark pipeline. City obtains a significant amount of water from Lewis and Clark. (Sioux Falls Exh. E). Applicant had not yet entered into a crossing agreement with Lewis and Clark, but Lewis and Clark Executive Director Troy Larson testified the parties were actively engaged in working on one. The City defers to Lewis and Clark as to any arguments on that issue.

Insurance. The City made an oral motion at hearing asking that the Applicant be required to submit liability insurance policies.

Several items have either been filed or must be filed by law. First, Applicant's witness Joey Mahmoud agreed to file information on the insurance held by Applicant's Contractor for the project. The Applicant fulfilled that commitment on November 3, 2015 by making a post-hearing filing under ARSD 20:10:01:24.03.

Second, the Applicant is required by law to submit a certificate of insurance in compliance with SDCL 49-16A-100.3 and SDCL 49-16A-100.6. Although it appears this certificate of insurance is to be filed with the South Dakota Department of Transportation ("DOT"), Applicant should also file the certificate with the Commission. Third, if a permit is granted the Applicant must submit an indemnity bond to the Commission under SDCL 49-41B-38 to address potential damage to roads, bridges, or other related facilities.

Although the City would be interested in obtaining copies of any additional liability insurance policies over and above the items listed, the City is now independently engaged in easement negotiations with the Applicant and

is seeking protections for its Landfill features and fixtures in that process, including insurance as necessary. Further, while the public might want to review such policies, they may not have the opportunity to review them anyway in light of ARSD 20:10:01:39, the Commission's rule pertaining to proprietary information. Consequently, the City is not going to engage in protracted debate to force the Applicant to file liability insurance policies (other than the items already required to be filed).

Moreover, regardless of any insurance coverage the Applicant holds or provides to the Commission, the Applicant is responsible for its operations and must pay for all damages it causes, not just its coverage limits. Based on conditions the Commission has imposed in other cases, it is clear the Commission recognizes the heavy responsibility pipelines hold in terms of liability. *Matter of Transcanada Keystone Pipeline, LP (HP09-001)* (conditions 45-50). In fact, the Applicant agreed to such conditions in the Mahmoud Pre-filed Rebuttal Testimony.

Outside the permit process, the Applicant would be required to disclose the extent of any additional insurance coverage if a lawsuit were filed claiming damages from the Applicant. Under the Federal Rules of Civil Procedure, Rule 26(a)(1)(A)(iv), a defendant must produce, at the very beginning of litigation, a copy of "any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment."

The City does not waive its right to seek additional liability protection as it engages in easement negotiations with the Applicant relating to City property or to discover the extent of the Applicant's coverage in the event the City ever pursues damage claims against the Applicant, both of which are independent of this proceeding.

Dated this 6th day of November, 2015.

CITY OF SIOUX FALLS

A handwritten signature in cursive script that reads "Diane Best". The signature is written in black ink and is positioned above a horizontal line.

Diane Best
Assistant City Attorney
P.O. Box 7402
Sioux Falls, SD 57117

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)	
APPLICATION OF DAKOTA)	HP14-002
ACCESS, LLC FOR AN ENERGY)	
FACILITY PERMIT TO CONSTRUCT)	CERTIFICATE OF SERVICE
THE DAKOTA ACCESS PIPELINE)	
)	

Diane Best, Assistant City Attorney for the City of Sioux Falls, hereby certifies that on this 6th day of November 2015 she served a true and correct copy of the *Post Hearing Brief (City of Sioux Falls)* on each of the parties of record as shown in the attached list via the method indicated on the list.

SIOUX FALLS CITY ATTORNEY:


Diane Best
Assistant City Attorney
224 W. Ninth St.
Sioux Falls, SD 57104
(605) 367-8880
dbest@siouxfalls.org

PARTIES OF RECORD

IN THE MATTER OF THE APPLICATION OF DAKOTA ACCESS, LLC FOR AN ENERGY
FACILITY PERMIT TO CONSTRUCT THE DAKOTA ACCESS PIPELINE

Service List
HP14-002

Service by Email

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us

Mr. Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brian.rounds@state.sd.us

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Mr. Brett Koenecke - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
Brett@mayadam.net

Ms. Kara Semmler - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
kcs@magt.com

Mr. Tom Siguaw
Senior Project Director - Engineering
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
tom.siguaw@energytransfer.com

Mr. Keegan Pieper
Associate General Counsel
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
keegan.pieper@energytransfer.com

Mr. Stephen Veatch
Senior Director - Certificates
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
Stephen.veatch@energytransfer.com

Mr. Joey Mahmoud
Senior Vice President - Engineering
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
Joey.mahmoud@energytransfer.com

Mr. Jack Edwards
Project Manager
Dakota Access, LLC
4401 S. Technology Dr.
South Suite
Sioux Falls, SD 57106
Jack.edwards@energytransfer.com

Ms. Jennifer Guthmiller
McPherson County Auditor
PO Box 390
Leola, SD 57456
mcpersonaud@valleytel.net

Mr. Keith Schurr
Edmunds County Auditor
PO Box 97
Ipswich, SD 57451
Keith.schurr@state.sd.us
(605) 426-6762 - voice

Ms. Kelly Toennies
Faulk County Auditor
PO Box 309
Faulkton, SD 57438
Kelly.toennies@state.sd.us

Ms. Theresa Hodges
Spink County Auditor
210 E. Seventh Ave.
Redfield, SD 57469
spinkcoauditor@nrcvtv.com

Ms. Jill Hanson
Beadle County Auditor
Suite #201
450 Third St. SW
Huron, SD 57350
auditor@beadlesd.org

Ms. Jennifer Albrecht
Kingsbury County Auditor
PO Box 196
DeSmet, SD 57231
Jennifer.albrecht@state.sd.us

Ms. Susan Connor
Miner County Auditor
PO Box 86
Howard, SD 57349
minerauditor@minercountysd.org

Ms. Roberta Janke
Lake County Auditor
200 E. Center St.
Madison, SD 57042
lakeauditor@lakecountysd.com

Ms. GERALYN Sherman
McCook County Auditor
PO Box 190
Salem, SD 57058
mccookaud@triotel.net

Mr. Bob Litz
Minnehaha County Auditor
415 N. Dakota Ave.
Sioux Falls, SD 57104
blitz@minnehahacounty.org

Ms. Sheila Hagemann
Turner County Auditor
PO Box 370
Parker, SD 57053
turcoaud@iw.net

Ms. Marlene Sweeter
Lincoln County Auditor
104 N. Main St.
Canton, SD 57013
auditor@lincolncountysd.org

Ms. Lisa Schaeffbauer
Campbell County Auditor
PO Box 37
Mound City, SD 57646
campbellcommission@yahoo.com

Ms. Karla Engle
Special Assistant Attorney General
South Dakota Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501-2586
karla.engele@state.sd.us

Mr. Scott Pedersen
Chairman
Lake County
200 E. Center St.
Madison, SD 57042
lakegovt@lakecountysd.com

Mr. Manuel J. de Castro, Jr.
Attorney
Lake County States Attorney
200 E. Center St.
Madison, SD 57042
lakesa2@lakecountysd.com

Mr. Steve Harper
General Manager
WEB Water Development Association, Inc.
PO Box 51
Aberdeen, SD 57402
sharper@webwater.org

Mr. Randy Kuehn
17940 389th Ave.
Redfield, SD 57469
rlkfarms@gmail.com

Mr. Jim Schmidt
Chairman
Lincoln County Board of Commissioners
104 N. Main, Ste. 110
Canton, SD 57013-1703
Auditor@lincolncountysd.org

Mr. Michael F. Nadolski - Representing Lincoln County Board of Commissioners
Attorney
Lincoln County
Ste. 200
104 N. Main
Canton, SD 57077
mnadolski@lincolncountysd.org

Mr. Bret Merkle - Representing Pente Farms, LLC; KKKP Property, LLLP; Pederson Ag, LLC;
Calvin Schreiber; DLK&M, LLC; Jean Osthus; and Daniel & Marcia Hoiland
Merkle Law Firm
PO Box 90708
Sioux Falls, SD 57109-0708
bret@merklelaw.com

Ms. Cindy Heiberger
Commission Chairman
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
cjepsen@minnehahacounty.org

Mr. Kersten Kappmeyer
Attorney
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
kkappmeyer@minnehahacounty.org

Mr. Glenn J. Boomsma - Representing: Peggy A. Hoogestraat, Kevin J. Schoffelman, Linda
Goulet, Corlis Wiebers, Mavis Parry, Shirley Oltmanns, Janice E. Petterson, Marilyn Murray,
Delores Andreessen Assid, Joy Hohn, and Orrin E. Geide
Attorney
Breit Law Office, P.C.
606 E. Tan Tara Circle
Sioux Falls, SD 57108
glenn@breitlawpc.com

Ms. Peggy A. Hoogestraat
27575 462nd Ave.
Chancellor, SD 57015
gardengalpeggy@gmail.com

Ms. Joy A. Hohn
46178 263rd St.
Hartford, SD 57033
rjnchohn@gmail.com

Ms. Marilyn J. Murray
1416 S. Larkspur Trl.
Sioux Falls, SD 57106
murraymal@sio.midco.net

Mr. Larry A. Nelson - Representing: City of Hartford
Frieberg, Nelson and Ask, L.L.P.
PO Box 38
Canton, SD 57013
lnelson@frieberglaw.com

Ms. Teresa Sidel
City Administrator
City of Hartford
125 N. Main Ave.
Hartford, SD 57033
cityhall@hartfordsd.us

Ms. Linda Glaeser
Manager
Rocky Acres Land Investment, LLC
27324 91st Ave. E.
Graham, WA 98338
lglaeser@seattlecca.org
lmglaeser@wwdb.org

Ms. Linda Goulet
27332 Atkins Pl.
Tea, SD 57064
45Lgoulet@gmail.com

Mr. Dale E. Sorenson
Dale E. Sorenson Life Estate
45064 241st St.
Madison, SD 57042
a77man@msn.com

Ms. Kimberly Craven - Representing Dakota Rural Action and Indigenous Environmental Network (IEN)
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com

Ms. Sabrina King
Community Organizer
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabrina@dakotarural.org

Mr. Frank James
Staff Director
Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org

Ms. Debra K., Mr. Duane H. & Mr. Dennis S. Sorenson
24095 451st Ave.
Madison, SD 57042
stubbyfarmer@yahoo.com

Mr. Douglas Sorenson
24095 451st Ave.
Madison, SD 57042
plowboy@svtv.com

Mr. William Haugen
Haugen Investments LP
PO Box 545
Hartford, SD 57033
wh401889@hotmail.com

Mr. Phillip Fett
PO Box 572
Lennox, SD 57039
vonfett529@gmail.com
(605) 366-7155 - voice

Ms. Shirley M. Oltmanns
26576 466th Ave.
Sioux Falls, SD 57106
ssoltm@gmail.com

Mr. Bradley F. Williams
1044 Overlook Rd.
Mendota Heights, MN 55118
bwilliams@bestlaw.com

Mr. Craig L. & Ms. Dotta-Jo A. Walker
733 NE 15th St.
Madison, SD 57042
court_walker@hotmail.com

Mr. Kevin J. Schoffelman
712 W. Fourth Ave.
Lennox, SD 57039
klschoff@outlook.com

Mr. Charles J. Johnson
45169 243rd St.
Madison, SD 57042
c-bjohnson@svtv.com

Ms. Janice E. Petterson
6401 S. Lyncrest Ave., Apt. 307
Sioux Falls, SD 57108
grmjanp@sio.midco.net

Ms. Corliss F. Wiebers
607 S. Elm St.
PO Box 256
Lennox, SD 57039
wiebersco@gmail.com

Mr. Paul A Nelsen
46248 W. Shore Pl.
Hartford, SD 57033
paul@paulnelsenconstruction.com

Mr. Paul F. Seamans
27893 244th St.
Draper, SD 57531
jackknife@goldenwest.net

Mr. John Wellnitz
305 A St.
Osceola, SD 57353
johnwellnitz@gmail.com

Mr. Lorin L. Brass
46652 278th St.
Lennox, SD 57039
brass@iw.net

Mr. Tom Goldtooth
Executive Director
Indigenous Environmental Network
ien@igc.org

Mr. Dallas Goldtooth
Community Organizer
Indigenous Environmental Network
goldtoothdallas@gmail.com

Mr. Matthew L. Rappold - Representing: RST-Sicangu Oyate Land Office
and RST- Sicangu Lakota Treaty Office
Rappold Law Office
816 Sixth St.
PO Box 873
Rapid City, SD 57709
Matt.rappold01@gmail.com

Ms. Paula Antoine
RST-Sicangu Oyate Land Office
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net

Mr. Royal Yellow Hawk
RST- Sicangu Lakota Treaty Office
PO Box 430
Rosebud, SD 57570
yellowhawkroyal@yahoo.com

Ms. Thomasina Real Bird - Representing - Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
trealbird@ndnlaw.com

Ms. Jennifer S. Baker – Representing Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
Jbaker@ndnlaw.com

Ms. Mavis A. Parry
3 Mission Mtn. Rd.
Clancy, MT 59634
mavisparry@hotmail.com

Ms. Margo D. Northrup - Representing: South Dakota Association of Rural Water Systems, Inc.
Attorney
Riter, Rogers, Wattier & Northrup LLP
PO Box 280
Pierre, SD 57501-0280
m.northrup@riterlaw.com

Service by First Class Mail

Orrin E. Geide
46134 263rd St.
Hartford, SD 57033

Delores Andreessen Assid
c/o Laurie Kunzelman
3604 E. Woodsedge St.
Sioux Falls, SD 57108

John Stratmeyer
46534 272nd St.
Tea, SD 57064