

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

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

**INTERVENORS'
POST-HEARING BRIEF**

HP14-002

COME NOW, Peggy Hoogestraat and other parties represented by Breit Law Office, P.C. (the "Intervenors"), by and through their counsel of record, and hereby respectfully submit their Post-Hearing Brief.

A. BURDEN OF PROOF.

Applicant Dakota Access, LLC's ("Dakota Access") burden of proof is contained in SDCL 49-41B-22:

The applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;**
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;**
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and**
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.**

Including the foregoing, a total of 10 burdens of proof were acknowledged by Commissioner Nelson at the outset of the hearing. Hearing Transcript ("HT") at pp. 19-21.

A determination of compliance “with all applicable laws and rules” is based on a detailed review the Applicant’s actual efforts to comply with the law and not merely on the Applicant’s knowledge of the law and intent to comply. An intent to comply with the law results in a failure to meet the burden of proof required under South Dakota law. The Public Utilities Commission’s (the “PUC”) duty to protect the public and environment from irreparable or catastrophic injury cannot be based solely upon Dakota Access’s intent to follow the law. Rather, in making its decision, the PUC must analyze the facts presented at the hearing and identify direct evidence of Dakota Access’s actual compliance with the law.

B. DAKOTA ACCESS HAS FAILED TO MEET ITS BURDEN OF PROOF.

1. Dakota Access Has Failed To Meet Its Burden Of Proof That Its Proposed Crude Oil Pipeline Will Comply With All Applicable Laws And Rules Under SDCL 49-41B-22 (1).

Before granting a permit, the PUC is required by law to find that the proposed pipeline “will comply with all applicable laws and rules,” including both state and federal laws. Mere reliance on knowledge of the law and intent to follow it will result in an evidentiary standard that offers no meaningful review of actual compliance with the law and therefore no actual protection of citizens or the environment from the dangers of noncompliance with the law.

i. Dakota Access has violated SDCL Ch. 21-35.

SDCL Ch. 21-35 provides the law regarding condemnation under power of eminent domain. It requires, among other things, that the condemnor must (i) provide a verified statement that the proceeding is in good faith, and (ii) attach a document which

provides the condemnor with its condemnation authority. Dakota Access has violated this law by suing landowners without fulfilling the good faith requirement and by not attaching its authorization document.

Joey Mahmoud, vice president of Dakota Access, testified that Dakota Access has sued some landowners two or three times already. The first wave of lawsuits filed against these South Dakota citizens were to gain survey access, even though South Dakota law is clear that access is not “inherent” as claimed by Dakota Access. In Lincoln County, Circuit Court Judge Bradley Zell found against Dakota Access in finding that the right to access private citizen’s land was indeed not “inherent” because Dakota Access would first need its construction permit to be issued by the PUC. Judge Zell’s order dismissing this case was issued September 2, 2015.

In a companion case venued in Minnehaha County, Dakota Access has yet to obtain its court order approving survey access despite the fact that the hearing was held on July 7, 2015.

These lawsuits are evidence of bad faith and intimidation techniques employed by Dakota Access. It is also interesting to note that on the eve of the July 7 hearing, Dakota Access made monetary offers to the defendant-landowners in exchange for a withdrawal of their opposition.

Recently, Dakota Access took these lawsuits a step further by appealing Judge Zell’s decision to the South Dakota Supreme Court. Dakota Access’s strategy is clearly to force landowners to fight and spend their hard-earned money, even though the law does not provide the remedy that Dakota Access is desperate to obtain.

Now, in an even more offensive series of lawsuits, Dakota Access has sued

landowners under a new theory, eminent domain, even though it has no construction permit. Again, the landowners are being forced to engage in a court battle despite the fact that Dakota Access has no legal authority to commence eminent domain lawsuits.

Testimony of Kevin Schoffelman confirmed that he has been sued twice by Dakota Access and has yet to speak to anyone from Dakota Access verbally. HT at 1082. Dakota Access has employed a “sue first, ask questions later” strategy with the landowners who have been participating in the PUC approval process.

Dakota Access has violated SDCL 21-35-4 and 21-35-5 because they are acting in bad faith and cannot attach an authorization document to their condemnation complaint. These landowner have incurred substantial attorney’s fees defending these meritless lawsuits.

The PUC is not limited to reviewing only the pipeline permit laws in determining whether Dakota Access has violated laws. Rather, it has the discretion to review all of Dakota Access’s activities and determine that violations of eminent domain laws are material, done in bad faith, and will serve as a basis to deny the permit application.

ii. Violations of other laws and rules.

With respect other laws and rules that have been violated by Dakota Access, the Intervenor join with and adopt the legal arguments presented by Rosebud Sioux Tribe, Yankton Sioux Tribe, Dakota Rural Action, and Indigenous Environmental Network in this matter.

2. Dakota Access Has Failed To Meet Its Burden Of Proof That Its Proposed Crude Oil Pipeline Will Not Pose A Threat Of Serious

Injury To The Environment Nor To The Social And Economic Condition Of Inhabitants In The Siting Area Under SDCL 49-41B-22 (2).

Before granting a permit, the PUC is required by law to find that Dakota Access has met its burden to prove that the proposed pipeline will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants in the siting area under SDCL 49-41B-22 (2).

- i. There is a threat of serious injury to the environment and economic condition of the landowners due to the pipeline's intrusion into the highest populated area in South Dakota and its growth areas.**

Dakota Access has displayed a reckless disregard to the Sioux Falls area and its growth areas. The following testimony of Joey Mahmoud, Vice President of Dakota Access, is proof of this careless attitude:

Ms. Edwards: ...Do you have any responses as to why the project originally came so close to the population center of the state?

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Mr. Mahmoud: Okay. The reason it did was when we were routing was just the shortest distance between the beginning and end. We did our original routing studies, it did not indicate some of the developmental potential or the extent of the developable area, the future growth of the City of Sioux Falls, Tea, Harrisburg, Hartford. ... And that's what led to the reroute.

HT at 181-182.

Chairman Nelson:And so my question to you is: Is the pipeline going through the neighboring growth area of Harrisburg or not?

Joey Mahmoud (Vice President of Dakota Access): Good question. We are on the very edge of the growth area. We clip a very small corner of the Harrisburg growth area.

HT at 189-190.

Commissioner Hanson: I do want to echo my concern on the location of the pipeline. I was absolutely amazed at the first routing, how it snaked through all of those communities. And I'm still very concerned why the route of the pipeline was played so close to the highly populated areas and highest economic growth areas of our state. I'm still very concerned with that.

HT at 194.

When Chuck Frey testified, he too had no explanation as to why this pipeline needs to run through Sioux Falls and the Harrisburg growth area:

Commissioner Hanson: Do you have any knowledge of a need for routing the pipeline so close to the highest populated and highest economic growth area of South Dakota, a need for routing it?

Chuck Frey (Vice President of ETP): Well, the route was chosen, and based on a number of factors, as was discussed in Mr. Mahmoud's testimony, the initial route's laid out just from point A to point B, and then we work to move around high consequence areas, tribal lands, environmentally sensitive areas, you know, a large number of items that are involved in the routing selection.

Commissioner Hanson: I believe that Mr. Mahmoud's testimony was that originally it was routed based upon the shortest route.

Mr. Frey: Correct. I'm sorry. That's what I meant from point A to point B.

HT at 289-290.

Essentially, as stated by Mr. Frey, Sioux Falls and Harrisburg just happen to be sitting in the way of "point A to point B" and were clearly non-factors with regard to route selection. Accordingly, since the pipeline route runs through Sioux Falls and through the Harrisburg growth plan area, Dakota Access admits that it *does not* consider Sioux Falls or Harrisburg a "high consequence area."

The lack of concern over Sioux Falls and Harrisburg continued with the testimony of Jack Edwards, project manager for Dakota Access:

Commissioner Hanson: Is it still - - is your routing still motivated by having the shortest route that you can?

Mr. Edwards: Yes. In the pipeline business it's always motivated by the shortest route.

Commissioner Hanson: So let me ask you the question again, and I would like a yes or no. Are you aware if there is a need for routing the pipeline so close to the highest populated and highest economic growth area of South Dakota? Is there a need? I'm going to assume the answer's no by the length of time it's taking you to come up with it.

Mr. Edwards: No. You're correct. Yes.

HT at 370-371.

During rebuttal, Mr. Mahmoud provided additional testimony which was not only conflicting, but seemed to be meant to confuse and dodge the issue:

Mr. Boomsma: ...same question to you, are you aware of the need to route the pipeline near highly populated and growing cities in South Dakota?

Mr. Mahmoud: Yes.

Mr. Boomsma: You're aware of the need to do that?

Mr. Mahmoud: Well, in my opinion.

Mr. Boomsma: Mr. Edwards said he was not aware of that need. You disagree with him?

Mr. Mahmoud: I do.

Mr. Boomsma: And so what is the - - the essential requirement or need to have this pipe in this growth area as opposed to someplace else that would not be in the growth area?

Mr. Mahmoud: ...So when we're routing the pipeline, we squarely believe that we did move outside of those areas that there was an initial concern with.

Mr. Boomsma: You're not going to take the position, are you, sir, that you feel where the pipeline is routed right now in the Tea and Harrisburg area would not be considered a growth area, are you?

Mr. Mahmoud: ...So no. I do not take that position that you are articulating. I think that we, in fact, are complying with everybody's wishes through that area.

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Mr. Boomsma: I believe you are playing word games with me, and I want to be more pointed with my questions.

Mr. Mahmoud: Okay.

Mr. Boomsma: Here's my question. You will agree, will you not, that the pipeline route goes through a growth area of Tea and Harrisburg? Yes or no?

Mr. Mahmoud: Well, Mr. Boomsma, if we're going to play word games, please rephrase the question so you're not adding prefaces or prepositional phrases **in** front of my answer because I can't follow it. I'll be happy to answer it, but you can't ask me a question with a double negative or positive of whatever it is you've got to help me understand so I can answer it.

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Mr. Boomsma: Do you agree that the pipeline route as presently proposed goes through a growth area not only by Tea but also by Harrisburg and also by Sioux Falls? Yes or no? This is not trickery.

Mr. Mahmoud: No.

Mr. Boomsma: You don't think the pipeline goes through a growth area?

Mr. Mahmoud: The whole United States is a growth area, so I guess in general terms, yes. But we moved outside of what the predetermined growth areas were for these communities based upon their feedback.

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Mr. Boomsma: Did you give them the option of not having the route at all going through their growth area?

Mr. Mahmoud: No. Of course not.

HT at 2047-2057.

Mr. Mahmoud's testimony continued with the agreement that the pipeline did not get rerouted further west to avoid the growth areas because that would have been more expensive. HT at 2067-2068. There are 578 square miles in Lincoln County. Why on

earth would Dakota Access believe that its best option would be to pass through the highest populated extreme northern portion of Lincoln County instead of the sparsely populated central or southern portion of Lincoln County? The answer is twofold: (i) Dakota Access wants to save money; and (ii) they just don't give a damn. Did the leaders and citizens of Tea and Harrisburg have any option or choice? "Of course not."

Moreover, the landowners who bravely exercised their right to voice their opposition to the pipeline route have been sued 2 or 3 times already. HT at 2079. Mr. Mahmoud was the person who made the decisions to file lawsuits because "the buck stops with him." HT at 2080. Yet, he is unable to articulate why his pipeline has no choice but to through these cities and growth areas.

Commission Hanson's further questioning of Mr. Mahmoud *resulted in an admission* that Dakota Access *has not met its burden* to prove that no serious economic or environmental harm will occur:

Commissioner Hanson: Would future growth of these communities increase community impact of the expected inhabitants and the economic development - - and the economic impact?

Mr. Mahmoud: *It certainly could. Sure.*

HT at 2118.

Mr. Mahmoud also admitted that he knows of no reason at all why the pipeline couldn't have been routed further south to avoid Tea and Harrisburg:

Commissioner Hanson: ...Are you aware of any environmental reason why the route of the pipeline cannot be moved farther away from the Harrisburg - - high growth areas of Harrisburg and Tea?

Mr. Mahmoud: I would have to look. *No, sir. I'm not.*

HT at 2119.

The foregoing testimony is an undisputed fact of this case, and results in no other finding other than the fact that Dakota Access has failed to meet its burden under SDCL 49-41B-22(2), (3), and (4).

ii. The economic condition of landowners will be seriously injured.

A primary economic harm to landowners will be removal, impairment or destruction of valuable drain tile systems. It is undisputed that drain tile installation in farm land is a substantial investment made by farm owners, and that it increases productivity and value of agricultural land. It is also undisputed that the pipeline will be buried at the same depth of most tile systems. Dakota Access will have to destroy or remove existing tile lines, manipulate system elevation, and re-install or repair the system. The operation of drain tile systems is dependent upon correct elevation to ensure flow of water. When Dakota Access breaches this system, the elevation will be dropped beneath the pipeline and then ascend on the other side of the pipeline to meet with the original system. The ascending tile will not function properly, thereby causing serious economic harm to the landowner. As stated by Brian Top, “You can’t go over. You can’t go under. If the pipeline is put in at the depth that’s suggested, it’s going to directly impact most of the tile lines.” HT at 1105.

The second harm with regard to repair of drain tile is the fact that Dakota Access does not plan to install a “tile bridge,” which is a structure that prevents the soil above the repair from collapsing. HT at 1131. Without a tile bridge, the tile will “dip” and fill with sediment and reduce the capability and integrity of the system. *Id.*

The third harm regarding drain tile is the destruction of clay and concrete tile

systems which were installed during the early 20th century in Minnehaha and Lincoln counties. These systems are fragile and can only be successfully repaired/replaced under the best conditions. HT 1104.

Overall, any testimony of Dakota Access that it will “work with” the landowner in cases where drain tile fails after installation should not be given any merit or weight by the PUC. It is clear that Dakota Access’s intentions and contracts call for one-time compensation and thereafter the landowners are on their own to pay for future damages and repairs. Obviously, any subsequent repair in the vicinity of the pipeline will be more expensive than repairing ordinary tile where a pipeline will not have to be negotiated under or around.

Removal and replacement of topsoil is another cause of serious economic harm. Dakota Access intends to strip 12 inches of topsoil and then replace it. However, where there is less than 12 inches of topsoil, the restoration will be much more difficult than areas that have deeper topsoil. It is undisputed that the productivity of the soil, no matter the depth, will be negatively impacted. According to Mr. Top, it will take on average 10 years for soil to return to productivity, but in some cases it never will. HT at 1108. The reason is that nature has built the soil composition for thousands of years, and it is full of microbes, fungi, bacteria, earthworms, etc., that have formed the root systems. HT at 1112.

Despite these realities, Dakota Access is only willing to pay for 3 years of crop loss. Any testimony given by Dakota Access that they will “work with” the landowner in cases where productivity is not restored as estimated should not be given any weight by the PUC because Dakota Access will not have any contractual obligation to do so.

Disturbance of the natural soil compaction is another issue which will cause serious economic harm. The heavy equipment used by Dakota Access will squeeze the air out of the soil causing unnatural compaction, which will take many years of freezing and thawing to restore back to normal. HT at 1113. Deep tillage after construction will not solve the problem. *Id.* These soil compaction damages will exist for up to 20 years according to studies. *Id.*

The testimony of Sue Sibson supports the fact that pipeline reclamation efforts do not restore the land to its previous condition. The Sibsons were subjected to the installation of the TransCanada Pipeline on their land. Exhibits I 16(a) through I 16(l) (and the related video) are images taken of the Sibson land in July of 2015. This pipeline was buried in September 2009 by the same contractor hired to construct the Dakota Access pipeline. Those images show the devastating effect that the installation and so-called reclamation had on this property. Suffice it to say that the Sibson's land appears to contain a brown "landing strip" of dead, non-productive, and non-useful agricultural ground caused by the "incompetence in reclamation" displayed by Michels Construction. The affected area had previously never been disturbed by man. Now, however, all native grasses are destroyed and have not been able to be restored. The loss is permanent. HT 1183-1191.

Similarly, Kent Moeckley, owns land which was crossed by the TransCanada Phillips Petroleum pipeline in 2009, and which was installed by Michels Construction. HT at 1378-79. Seven years later, the productivity of the crop land is "remarkably less." HT at 1380. According to Mr. Moeckley, the crop is "very uneven down the corridor of the construction easement" and that the crop is simply "botched." *Id.* Specifically, the

crop, whether corn or soybeans, is “half the height of the plants outside of the construction area for the pipeline... it’s up and down and irregular, and you can tell that the ground has been pretty much upset and become unproductive.” *Id.* at 1381. This has been the case for 7 years. *Id.* “Not only has the ground been disturbed, ripped up and then thrown back in, and in our case in mud, total water, but they’ve also worn the ground down so there is a bit of a concave in the easement.” *Id.* at 1382. A different construction tried to fix the problems, “but it’s not all remedied and probably won’t be forever.” *Id.* Mr. Moeckly crops in the easement area have been one-third less productive since the installation of the pipeline. *Id.* The value of the land has been decreased and won’t be back to normal in Mr. Moeckley’s lifetime. *Id.* at 1384-85.

iii. The economic condition of specific landowners impacted by the pipeline route will be seriously injured.

The following landowners will suffer serious economic harm by the installation of the pipeline:

Tom and Nancy Stofferahn. The Stofferahns reside in Humboldt, South Dakota, and also own a seed company on their property known as Nortec Seeds. HT at 1134. For the past 2 years the Stofferahns have been planning a \$700,000 business expansion to add up to 50 acres of seed research plots and a 60’ x 152’ warehouse on the property. HT at 1136-1139; 1288-1290. The proposed pipeline will cross diagonally through this property and destroy the viability of putting research test plots on the property because the disturbed soil will no longer be suitable for proper test conditions, and may never be adequately restored. HT at 1138. The pipeline will also cross within 200 feet of the proposed warehouse site, making that construction plan no longer viable. HT at 1138;

111157.

Nortec Seeds has gross sales of 3.5 million and is positioned for substantial growth. As stated by Mr. Stofferahn, “If we cannot do all these test plots, research plots in back of us and we want to bring our customers in to show them the new hybrids, the new chemical systems for soybeans... then I may lose a customer.” HT at 1145. “That land is going to be damaged for some years, and we have the type of soil that’s probably not going to come back very fast. HT at 1150. Commission Nelson inquired about the reliability of test plots that are planted in disturbed soil, and Mr. Stofferahn answered “It’s going to change the results dramatically.” HT at 1154.

The Stofferahn’s drain tile will also be subject to failure because it is located at a depth between 30 to 36 inches, which is generally the same depth as the proposed pipeline. HT at 1140-1141. The Stofferahns also rely on the clay tile system, which is a working system, which ultimately drains into Skunk Creek and the Big Sioux River. HT at 1141-1144. Mr. Stofferahn has first-hand experience working with this historic clay tile system, and testified that it is impossible to splice into these systems because “They crumble as soon they touch them.” HT at 1142.

During testimony, Dakota Access was dismissive of the Stofferahn’s business plans and felt that its business plans should be considered much more important.

Orrin Geide. Mr. Geide testified that he has developable land impacted by the proposed pipeline, including 7 housing eligibilities. It will not be long before these housing eligibilities become very attractive due to the westerly growth of Sioux Falls. The pipeline, thus, is planned to run through this growth area and cause serious economic

injury to Mr. Geide. HT at 1224-1226.

In addition, Mr. Geide has been raising buffalo on his property for the last 20 years and is in the process of having his herd certified organic. This certification process will be unattainable if the pipeline is allowed to pass through his buffalo pasture, because the grasses will no longer be native as required, and the pipeline would also introduce weed control measures such as herbicides, which compromise the ability to be certified organic. HT at 1230-1232.

Kevin Schoffelman. Mr. Schoffelman's land near Tea has been in the family for close to 90 years, and is now owned by his six sisters and himself. There are two nearby housing developments that will serve residents of both Tea and Sioux Falls, and with respect to the Schoffelman land, the plan is that "at some point there are going to be houses put there." HT at 1076-1078. This family will suffer serious economic harm from the pipeline because you cannot build a desirable housing development where a pipeline cuts diagonally through the quarter. There is no longer any viable manner in which to properly plan a development where you are unable to build streets or houses through the middle of it. *See also* HT 1175-1176 (testimony of Linda Goulet).

Laurie Kunzelman. The 360 acres of land in the Kunzelman and Assid families, which lies 2 miles west of Tea, has been in the family since 1882. HT at 1270-1271. This land is suitable for development and has seven building eligibilities. However, the proposed pipeline will bisect the land diagonally from the northwest corner to the southeast corner. *Id.* at 1272. In fact, Laurie and her husband were planning to build a

home on the southeast corner, but the proposed pipeline would prevent building the family acreage they had hoped for. *Id.*

This property also contains two main cement drain tile lines which were installed approximately 88 years ago. *Id.* at 1274. The pipeline is proposed to cross one such line, and any compromise of the integrity of this line will result in flooding of the farmhouse. *Id.* In addition to the development and flooding concerns, the pipeline will also run extremely close to homes and buildings, as depicted in Exhibit 45.

Peggy Hoogestraat. Peggy owns 280 acres in between Humboldt Hartford along Highway 38, which is both crop land and pasture land. HT at 1310. Like other properties in the area, this property has seven building eligibilities remaining, as well having old clay tile lines and modern tile lines which were installed as recently as 2014 which required a \$50,000 investment. *Id.*; 1318. The proposed pipeline will cross these tile lines. *Id.* at 1311. The pasture area to be crossed by the pipeline is native and has never been tilled. In fact, little or no machinery has ever crossed this pasture. *Id.* at 1312. Peggy explained how the water drainage on her property is heavily depending on the clay and other tile systems working correctly, including those systems located on neighboring parcels. *Id.* at 1313. Lastly, if the pipeline is installed, the unique characteristics of her land and limited road access to it will be compromised to the extent that she may no longer have sufficient access to portions of her land to farm them anymore. *Id.* at 1315. The tiling investment and other improvements recently made to this land has resulted in a 52% increase in soybean yield, and a 30% increase in corn yield. *Id.* at 1319. If the pipeline is installed, these investments and gains will be lost or

substantially impaired causing serious financial injury to the Hoogestraats.

Allan Arends. Mr. Arends, along with his mother and siblings, own 80 acres in Minnehaha County located 2 miles south and quarter mile east of what is known as the Wall Lake corner. HT at 1427. This land is characterized by 24 of acres of untilled native pasture and 58 acres of cropland. *Id.* This family has experienced the growth from 41st Street in Sioux Falls since it was a gravel road. Now, the city has expanded west to the point where 5 acres across the road from the Arends land has been purchased for a new electric substation, which will serve the further development of residential and commercial uses. *Id.* at 1429. This land is prime for development of those uses. *Id.* The construction of an oil pipeline through this developmental area is a very poor idea.

Mr. Arends also testified that communications from Dakota Access was extremely poor, and that “the only contact I received from Dakota Access was when I received a summons to survey.” *Id.* at 1430.

Marilyn Murray. Marilyn is part of the Schoffelman family, and introduced evidence of the housing development 1/2 mile from their land, which has 70 individual acreages already built upon it. HT at 1412. Marilyn testified that the 70-household development is literally across the street from the City Of Tea’s projected growth plan and that there are already established developments outside of the growth plan for many of the surrounding towns. HT at 1413-14. Ms. Murray is a real estate agent and provided further testimony that the monetary value, as well as developmental value, of properties impacted by the pipeline will be diminished. *Id.* at 1414-15.

The foregoing examples are only a few of the instances heard by the PUC regarding the economic injury to South Dakota citizens. The fact of the matter is that all land, all land values, all land uses, and all landowners will suffer harm economic injury. The testimony of Sue Sibson and Kent Moeckley, whose experiences are real examples of injury, underscore the economic harm that will be suffered by all landowners.

iv. The environment will be seriously injured by construction activities and an oil release.

The foregoing economic harms directly coincide with serious environmental harm. The environment includes the natural characteristics of soil and waterflow. All of the construction activities necessary to install the pipeline will disturb the environment and permanently change its characteristics. All pipelines will leak. No matter what level of monitoring, valves, and emergency response solutions are in place, there is no getting around the fact that a failure will occur and the consequences will be serious to the landowners affected.

With respect these and other environmental harms, the Intervenors join with and adopt the arguments presented by Rosebud Sioux Tribe, Yankton Sioux Tribe, Dakota Rural Action, and Indigenous Environmental Network in this matter.

3. Dakota Access Has Failed To Meet Its Burden Of Proof That Its Proposed Crude Oil Pipeline Will Not Substantially Impair The Health, Safety Or Welfare Of The Inhabitants Under SDCL 49-41B-22 (3).

With regard to Dakota Access's burden of proof relating to SDCL 49-41B-22(3),

the health safety and welfare of inhabitants is considered addressed above in Section B 2 of this Brief.

4. Dakota Access Has Failed To Meet Its Burden Of Proof That Its Proposed Crude Oil Pipeline Will Not Unduly Interfere With The Orderly Development Of The Region Under SDCL 49-41B-22 (4).

i. Orderly development of the Minnehaha and Lincoln County region will suffer undue interference caused by the pipeline.

As already set forth above, land owned by the Intervenors on the outskirts of Sioux Falls, Tea and Harrisburg is developable land. This land will be undevelopable once it is trespassed by the pipeline. *See* HT at 1076-78 (Schoffelman) and HT at 1175-76 (Goulet).

Equally as damaging is the extreme close proximity of the pipeline to existing houses and housing developments. It is evident that Dakota Access was trying not to disclose exactly how close its pipeline would be to existing houses, and introduced a list of close houses at the “eleventh hour” of this matter. *See* Exhibit 42. Upon receipt of this exhibit, Joy Hohn took a drive and photographed the proximity of some of these houses and others. Over the objection of Dakota Access, those photos were admitted into evidence as Exhibit I 46J.

Upon taking her drive through the easement area, Ms. Hohn was “shocked” and “really had her eyes opened” regarding the pipeline’s close proximity to existing houses. HT at 1242. Her findings were as follows:

Photo 1 - the pipeline will run 1/2 mile from housing and 1 mile south of the Harrisburg middle school.

Photo 2 - the pipeline is 3/4 of a mile southwest of the Harrisburg water tower.

Photo 3 - a house 250 feet from the pipeline.

Photo 4 - the foundation of a house currently being constructed 100 feet from the pipeline route, along with the trusses and lumber ready to be installed.

Photo 5 - on Louise Avenue, the pipeline will run right in between three homes.

Photo 6 - the pipeline will run 100 feet from the yard of the home located at 27446 471st Avenue and 200 feet from the house itself.

Photo 7 - the pipeline will run 300 feet from the home located at 27464 477th Avenue.

Photo 8 - the pipeline will run 50 from the property line of 27275 SD Hwy 17 and 250 feet from the livestock barn.

Photo 9 - the pipeline will run 150 feet from the home of John Straatmeyer located at 46534 272nd Street, in Tea, South Dakota.

Photo 10 - the pipeline will run mere yards from the livestock fence on the Hohn property.

Photo 11 - the pipeline will run 500 feet from the home of Lowell and Joyce Gray located at 46182 256th Street, Hartford, South Dakota.

Photo 12 - the pipeline will run across the driveway and/or other parts of the Kyle Grace home and farm buildings located at 46162 266th Street in Hartford.

Additional close homes were depicted in Intervenors Exhibits I 43, I 45, and I 47P.

Despite having tried to associate these homes with Dakota Access's list of close homes depicted on Exhibit 42, Ms. Hohn was unable to do so because the list provided by Dakota Access did not have home addresses or owner names and was impossible to decipher.

Joey Mahmoud did not care much for these photos:

Mr. Boomsma: The testimony was that those pictures represented areas that the pipeline was going to be in close proximity to.

Mr. Mahmoud: I have no idea what these pictures are.

Mr. Boomsma: Okay. That was my next question. By looking at those pictures, sir, are you able to discern whether indeed those pictures do depict the close proximity of this proposed pipeline to developments, houses, and farm sites?

Mr. Mahmoud: I have no idea what anything on here is. To me this is just somebody taking pictures of something. And no, I have no idea.

Mr. Boomsma: So you can't offer any facts to dispute not only the exhibit but the testimony from Joy Hohn in respect to that exhibit?

Mr. Mahmoud: All I can say is you have some pictures here of something. *And I wouldn't give them any credibility whatsoever.*

HT at 2068-69.

At best, Mr. Mahmoud displays an indifferent attitude regarding this issue, and it is more properly characterized as offensive.

CONCLUSION

The North Dakota and Texas oil business is not more important than the South Dakota farming industry. It is also not more important than the well-being of Sioux Falls and its high-growth areas. For the past ten years, Lincoln County has been one of the top 10 fastest growing counties in the United States, and that growth is centered upon the growth of Tea and Harrisburg.

A crude oil pipeline dissecting Tea and Harrisburg is ill planned and makes no economic sense, business sense, nor common sense, and will only serve to threaten the safety of South Dakota's most populated area. But, of course, according to Dakota Access, it will save them money to cut through these communities, so the PUC should

automatically rubber-stamp their plan. This line of thinking is nonsense and highly offensive.

In light of the foregoing, it is evident that Dakota Access has not met their burden to prove that it has not violated any rules or laws and their pipeline does not pose a threat of serious injury to the citizens of South Dakota. The Intervenor respectfully request the Commission to deny the permit application filed by Dakota Access, LLC.

Dated this 6 day of November, 2015.

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