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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

=====

Transcript of Proceedings
Public Input Hearing

January 22, 2015
Iroquois, South Dakota

=====

BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
GARY HANSON, COMMISSIONER
RICHARD SATTGAST, ACTING COMMISSIONER

COMMISSION STAFF

John Smith
Kristen Edwards
Greg Rislov
Brian Rounds
Darren Kearney

APPEARANCES

Brett Koenecke and Kara Semmler, Dakota Access Pipeline

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the Iroquois Gymnasium,
3 Iroquois, South Dakota, on the 22nd day of January, 2015,
4 commencing at 10:30 a.m.

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1 CHAIRMAN NELSON: Good morning, everybody.
2 Appreciate everybody coming out this morning.

3 My name is Chris Nelson. I'm Chair of the
4 Public Utilities Commission, and I am going to read some
5 of the background of this case to set the stage for
6 today.

7 With me here this morning are Commissioner
8 Gary Hanson and Acting Commissioner, our State Treasurer,
9 Rich Sattgast. Mr. Sattgast is serving as active
10 Commissioner for Commissioner Fiegen, due to
11 Commissioner Fiegen's determination that she has a
12 conflict of interest because the pipeline will, if
13 constructed, cross land owned by her sister-in-law and
14 brother-in-law. And the Governor, therefore, appointed
15 Mr. Sattgast to act as Commissioner in place of
16 Commissioner Fiegen.

17 Also at the head table we have Commission
18 Counsel John Smith and Commission Advisor Greg Rislov.

19 Our purpose here this morning is to hold a
20 public hearing in Docket HP14-002, In the Matter of the
21 Application of Dakota Access, LLC for an Energy Facility
22 Permit to Construct the Dakota Access Pipeline.

23 On December 15, 2014, Dakota Access, LLC filed
24 an Application for an energy facility permit for the
25 proposed Dakota Access Pipeline Project. On December 23,

1 2014, Dakota Access filed a Revised Application that
2 relocates the line in Spink County to avoid a center
3 pivot irrigation system and to accommodate some
4 landowner preferences and in Lincoln County to avoid
5 property within and close to development areas near
6 Sioux Falls.

7 The Revised Application is for approval of a
8 permit to construct a 1,134-mile, 12-inch to 30-inch
9 diameter pipeline that will connect the Bakken and
10 Three Forks crude oil production areas in North Dakota to
11 existing pipeline infrastructure in Illinois.

12 The project will originate in the northwest
13 portion of North Dakota, travel southeast through
14 South Dakota, Iowa, and Illinois, and terminate at the
15 existing Patoka, Illinois Hub. The pipeline is proposed
16 to transport approximately 450,000 barrels per day
17 initially with an anticipated capacity of up to 570,000
18 barrels per day.

19 Approximately 272.3 miles of the 1,134-mile long
20 pipeline will be constructed within South Dakota,
21 crossing 13 counties in the eastern half of the state.
22 The project would enter South Dakota in Campbell County
23 approximately 17 miles east of the Missouri River and
24 continue southeast through McPherson, Edmunds, Faulk,
25 Spink, Beadle, Kingsbury, Miner, Lake, McCook, Minnehaha,

1 Turner, and Lincoln Counties.

2 The project would cross the Big Sioux River
3 approximately 14 miles south of Sioux Falls and continue
4 in a southeasterly direction through Iowa. One pump
5 station would be located within South Dakota
6 approximately 7 miles southeast of Redfield in Spink
7 County.

8 A copy of the Revised Application is on file
9 with the county auditors of each of the 13 counties
10 crossed by the project. You can also access the
11 Application and all nonconfidential documents in the
12 official file on the Commission's website at
13 www.puc.sd.gov under Commission Actions, Commission
14 Dockets, 2014 Hydrocarbon Pipeline Dockets, and scrolling
15 down to HP14-002 or by calling or writing or stopping in
16 at the Commission.

17 The purpose of the hearing this morning is to
18 provide information to the public about the proposed
19 project and to hear public comments about the project.
20 Interested persons have the right to present their views
21 and comments regarding the Revised Application, and we
22 want to encourage you to do so. No decisions are being
23 made today or in the near future.

24 The parties to this proceeding at this time are
25 Dakota Access and the Commission Staff. The South Dakota

1 Department of Transportation, Lake County, and the WEB
2 Water system have filed applications for party status,
3 but the Commission hasn't yet acted on those.

4 Under South Dakota Law each municipality,
5 county, and governmental agency in the area where the
6 facility is proposed to be constructed or any interested
7 person or organization may be granted party status in
8 this proceeding by making Application to the Commission
9 on or before February 13, 2015.

10 We have Application for party status forms
11 available here this morning if you'd like to apply for
12 party status, and the form is also available on the
13 Commission's website for this docket or by contacting the
14 Commission.

15 I'd like to emphasize to everyone you do not
16 need to become a party in the case to make your voice
17 heard before the Commission. The reason we're here this
18 morning is to hear your comments and what you have to say
19 and your concerns about the project.

20 We will also be accepting comments in writing
21 from anyone, either by mail, personal delivery, or
22 e-mailing the Commission at puc@state.sd.gov. We'll take
23 those comments right up to the time of the decision. So
24 you only need to apply for party status if you want to
25 participate formally in the case by putting on actual

1 testimony or other factual evidence, conduct discovery,
2 cross-examine witnesses, or make legal arguments, and to
3 preserve your right to appeal to the courts if you don't
4 believe our decision is legally correct.

5 I also want you to know that each of the
6 Commissioners and all of the Staff assigned to this
7 docket thoroughly read all comments submitted by the
8 public, and they are also filed in the docket file.

9 For its permit to be approved our law says that
10 Dakota Access would show that the proposed transmission
11 facility will comply with all applicable rules and laws,
12 will not pose a threat of serious injury to the
13 environment or to the social and economic condition of
14 inhabitants or expected inhabitants of the siting area,
15 will not substantially impair the health, safety, or
16 welfare of the inhabitants, and will not unduly interfere
17 with the orderly development of the region with due
18 consideration given to the views of governing bodies of
19 affected local units of government.

20 Based on these factors, the Commission will
21 decide whether the permit for the project will be
22 granted, denied, or granted upon such terms and
23 conditions or modification of construction, operation or
24 maintenance of the facilities as the Commission finds
25 appropriate.

1 I'd like to point out that we have our court
2 reporter, Cheri Wittler, here with us this morning. So
3 I'd ask that you please use the microphone and introduce
4 yourself and spell your name so we get it on the record.

5 I'd also like to point out that we have with
6 us Staff members Brian Rounds, Darren Kearney, and
7 Kristen Edwards of the Commission Staff. We want you to
8 feel free to speak to them, seek them out if you have
9 questions or need help with anything today, either here
10 or as we go through the process.

11 We will begin the hearing by having Dakota
12 Access representatives make a presentation to explain the
13 proposed project. Following that presentation we will
14 take comments from any interested persons or
15 organizations. And we strongly encourage members of the
16 public to present your view.

17 Before we get started I'd also ask to make sure
18 that each of you have placed your information on the
19 sign-in sheets so that we have a record of who was here
20 today. I want to take a moment to thank the folks here
21 at the Iroquois School who have been very welcoming to us
22 and made this available to us, and we appreciate their
23 help.

24 With that, Brett Koenecke, attorney for
25 Dakota Access, will be the introductory spokesman for

1 Dakota Access this morning.

2 Brett, would you introduce the folks that you
3 have with you and proceed with your presentation.

4 MR. KOENECKE: I will. Thank you, Commissioner
5 and good morning, everyone.

6 My name is Brett Koenecke. I'm a lawyer from
7 Pierre and representing Dakota Access in this
8 proceeding.

9 With me to my right is Joey Mahmoud, Senior Vice
10 President of Engineering with responsibility over
11 development and execution of the project.

12 To my far left is Tom Siguaw, Senior Director
13 over the entire project. To my immediate left is
14 Chuck Frey, Vice President of Liquid Engineering, Chief
15 Engineer for Design and Safety.

16 Behind me is Jack Edwards, Project Manager in
17 Iowa and South Dakota and overall construction manager.
18 Micah Rorie, right-of-way manager for North Dakota and
19 South Dakota. Monica Howard is the project's
20 Environmental Manager.

21 Keegan Pieper is Associate General Counsel and
22 Project Counsel from Texas. And also my law partner
23 Kara Semmler.

24 Commissioner, we very much look forward to
25 participating in today's meeting, and I'll turn it over

1 to Joey who will take us through the PowerPoint.

2 MR. MAHMOUD: Good morning.

3 First let me say thank you for letting us come
4 into your community to present our project to you. A
5 little bit cold so we appreciate you all driving on the
6 roads to get here.

7 I'm with Energy Transfer, a parent company of
8 Dakota Access Pipeline. My name is Joey Mahmoud. I'm
9 Senior Vice President of Engineering. I'm out of
10 Houston, Texas. If I talk too fast or if you don't
11 understand something I'm saying, please interrupt me and
12 say slow down. I'd be happy to.

13 So who is Energy Transfer? I know a lot of you
14 may not have heard who we are or maybe you have. Who is
15 Dakota Access Pipeline?

16 First of all, Energy Transfer is a large
17 company. We're a Fortune 500 Company, actually in the
18 top 100. We are a transporter of energy products, not
19 electricity but crude oil, natural gas, natural gas
20 liquids. We process those liquids. We transport the
21 gas. We fractionate it.

22 So our business is transportation to and from
23 the production fields to the refineries where those
24 products are taken and made into things that we use every
25 day.

1 We operate somewhere just north of 71,000 miles
2 of pipe. So we're a large operator in the U.S. We're
3 actually the second largest by miles in the
4 United States. By commodities moved, depending on the
5 day, we're either the first or second largest. So we
6 have a tremendous amount of resources behind us.

7 A lot of people ask Can they stand behind this
8 project? Are they good neighbors? Do they conduct their
9 business in a fair way? The answer is yes, or we
10 wouldn't be who we are. We try to be very respectful.
11 We are a large operator with a proven track record.

12 So our footprint stretches from the border of
13 Arizona and California all the way to Florida and then
14 from Texas up to the Sunbelt or middle part of the
15 United States to the Detroit metro area, and then we
16 extend east into the northeast. And then you can see
17 where this pipeline moves from that central part of the
18 U.S. to Illinois up through the Dakotas to northwest
19 North Dakota.

20 That's our footprint. We operate in a lot of
21 states. That will be our first venture here in
22 South Dakota, and we're really looking forward to that.

23 So what is this project? Overall I'm sure
24 you've read or seen certain things about it.

25 Commissioner Nelson gave us a brief overview so I'll skip

1 over or go pretty quick over some of that.

2 But the basic objective here is to move crude
3 oil from the Bakken, northwest Bakken, Three Forks Play,
4 northwest North Dakota, move that crude oil from that
5 producing region. Again, we're not the producer. We're
6 the transporter. Taking that crude oil and moving it to
7 Illinois, southeast Illinois around Patoka or Vernon,
8 Illinois, where that crude oil will be redistributed to
9 other pipelines or infrastructure for deployment to
10 refineries in the Midwest and the Gulf Coast.

11 It's a reliable domestic supply. So this
12 project, what it does is it displaces foreign source
13 crude oil one for one that's consumed in the U.S. So
14 when we -- we normally import a barrel. Instead of
15 importing it, we would transport it from North Dakota.
16 So it's a big benefit to our country to decrease our
17 reliance upon foreign source crude.

18 Overall the project will move and been
19 contracted for approximately 450,000 barrels a day of
20 crude oil, with a design capacity to get to around 570 if
21 the prescription requires it or more.

22 With that, that's about a third of the Bakken
23 production that's being produced today. So a third of
24 that oil that's being moved on the rail or trucks that's
25 being produced and being transported will be displaced

1 and will be transported on this pipeline.

2 With that, we're going to build, sometime in the
3 latter part of either 2015 or the first part of 2016,
4 1,134 miles of varying diameter pipe, the majority of
5 that being 30 inch. In South Dakota it will all be
6 30-inch pipe. So somewhere around 274 miles.

7 There will be one pump station in Spink County.
8 And that's the only major above-ground facility. And
9 then the rest of the pipe is actually buried beneath the
10 ground so you won't see it once we're done, except for
11 valve locations that isolate the valve into sections.
12 Those will be above ground. And then the pump station
13 will be above ground. But everything else is buried
14 beneath the ground.

15 So this shows the project kind of big picture
16 scale from North Dakota to Illinois. So you can kind of
17 see the orientation. It runs in a fairly straight line,
18 a diagonal to the northwest to the southeast.

19 This map shows how we cross through the State of
20 South Dakota. Again, on the eastern side of the state
21 running from the north to southeast going into Iowa.

22 This slide here provides a breakdown of the
23 miles and -- the anticipated miles on a county-by-county
24 basis in the State of South Dakota. Approximately
25 274 miles. We round it up for this slide. The

1 Application actually shows just over 272, but with
2 rounding it shows 274 here. So it's approximate, but
3 it's somewhere around there with the current length.

4 So why is this project important to us as a
5 country, and what are the benefits? The project is
6 roughly a 3.8 billion dollar project of investment into
7 the U.S. economy. That means into manufacturing, into
8 labor resources, into goods and services that will be
9 employed for the construction and operation of this pipe
10 in the State of South Dakota that's about 820 million
11 dollars. 820 million dollars represents the cost of the
12 facilities that will be placed in this state.

13 When we pay taxes on this facility we will
14 actually be paying taxes on 820 million dollars that the
15 state will receive benefit from, and that's the cost for
16 the materials plus construction in South Dakota.

17 The big benefit here -- the main benefit is that
18 this project will move the oil that's being produced in
19 the Bakken and transport that to the refineries in the
20 Midwest and to the Gulf Coast that are existing today.

21 They have available capacity, they're existing,
22 where new refineries do not have to be built. We just
23 have to supply them with the crude oil to be refined into
24 the gasoline, to the diesel, to the products that we use
25 every day that move our vehicles, that fuel our tractors,

1 fuel the trucks that move our products, that fuel the
2 trains that run on diesel.

3 So this crude oil is vital for our survival and
4 for our independence as a country to produce our crops,
5 to produce the things -- what I'm wearing here today is
6 all influenced by crude oil. The shoes that you have on
7 your feet.

8 So everything that we do, we're a carbon-based
9 society. That's why this project is important. We have
10 to get the crude oil from the producing areas to the
11 refineries to turn that crude into useful products for
12 us, for all of us to benefit from.

13 The other benefits that we'll see, by taking
14 that crude oil off of the trucks and the rail, is that it
15 transfers to the pipeline which is by far the safest mode
16 of transportation out there. The most efficient, the
17 safest. Statistically it's proven time and time again.
18 By doing that we decrease the overall risk to the
19 environment as well as to us as citizens driving down the
20 road where we decrease our chance of a truck incident or
21 a rail incident.

22 For you in this part of the world in
23 South Dakota where your crops and you're moving those
24 commodities, the grains, the wheat, moving them from the
25 field to the trains, from the trains to the market that

1 are stacked up and backed up right now, although this
2 project isn't going to make a huge dent, it will displace
3 somewhere between four and six unit trains per day which
4 will free that rail capacity up for utilization for crop
5 commodity movement. So that's a benefit that will result
6 as the project is put into service.

7 The other thing it does, it creates a lot of
8 jobs. I show temporary jobs up here of somewhere between
9 10 to 12,000. Construction jobs are temporary in nature.
10 When you build a house it only takes so long to build.
11 When you build a pipe it only takes so long. So this
12 will take somewhere between six and nine months to build.

13 Those jobs, though, are permanent jobs for the
14 employers that employ construction workers. So don't
15 think of this as temporary. Think of it sustaining that
16 construction work force. So its to going to affect 10
17 to 12,000 Americans that are going to build this
18 pipeline.

19 Approximately 50 percent of that work force in
20 South Dakota -- in South Dakota, I should have mentioned,
21 will be about 4,000. So that's the amount of folks it
22 will take to build this pipeline across the state.

23 Of those, we've made a commitment to the unions
24 that are highly trained, skilled work force that build
25 these pipelines in our country, we've made a commitment

1 to them to provide that local resource either here in
2 South Dakota or in this region -- South Dakota cannot
3 support 4,000 construction workers, but they draw upon
4 the local region from North Dakota and Minnesota or Iowa,
5 surrounding states, to fill those slots.

6 So roughly half of the construction work force
7 will originate from this region. The rest will come from
8 around the country.

9 Overall we'll produce somewhere between 40 to 50
10 permanent jobs. Of those, somewhere between 10 to 12
11 will be permanent in the State of South Dakota, with the
12 majority of those in Spink County because that's where
13 the pump station is located. So our employees will be up
14 and down the pipe, but they'll be centered around where
15 the pump station is. It takes a little bit more
16 day-to-day operation than a buried pipeline that you
17 really never see.

18 Other benefits indirectly to the State of South
19 Dakota -- so it's kind of on a regional big picture
20 basis -- directly to the State it's going to bring
21 somewhere around 35, 36 million dollars of tax revenue to
22 the State of South Dakota. That's during construction.
23 So that's the sales tax that we pay on the goods and
24 services that we bring into the state. So it's a benefit
25 to the state to bring all of that money here.

1 The other thing that's not on this slide is
2 South Dakota has what's called a contractor's excise tax.
3 So when we hire that contractor here in the state we pay
4 2 percent -- or the contractor actually pays 2 percent of
5 their fees as a tax to the State. Of course, we pay
6 that. That's roughly 16 million dollars in itself.
7 That's in addition to this money.

8 On a long-term basis ad valorem taxes, we all
9 pay property taxes that will result in year one about
10 13 million dollars, and then that will depreciate over
11 time. So year two will be a different value, year three
12 will be a different value. But year one the tax value of
13 the asset when it's put into service will result in about
14 13 million dollars of tax revenue ad valorem to the
15 State.

16 The other thing that's on this slide is
17 right-of-way compensation. And I want to talk about
18 that. So that's direct payments for easements and
19 damages for displacement of crops or disturbances to your
20 property that we cross. That's estimated to be somewhere
21 around 47 million dollars for direct payments to
22 residents of South Dakota.

23 We started the project last year. We made our
24 first presentation to the PUC in July of '14. We held
25 several open houses in October. We made our filing to

1 the PUC in December. And then we're hoping for -- no
2 guarantees. And I don't want to put these guys on the
3 spot, but what we've asked for and we're trying to
4 provide data to facilitate a certificate in the third
5 quarter of this year, to facilitate construction either
6 in the fourth quarter or in 2016. That's our plan
7 horizon.

8 You know, that will be effective one way either
9 Q4 of '14 -- or '15 and maybe go into Q1 of '16. But the
10 big picture is we want to start construction the first
11 part of '15, go into service in the latter part of 2016,
12 some time around November or December.

13 The next several slides are kind of preemptive
14 answers to questions that we really get quite a bit.
15 Overall when the people -- a lot of folks ask Why are you
16 on my property or How did you route this pipeline through
17 South Dakota and Why are you here?

18 When we look at a pipeline we look at where we
19 need to start and where we need to end. So from point A
20 to point B. We draw a straight line on the map. It's
21 really that basic. And then we start to go through an
22 analysis that looks at the environmental resources.

23 We look at communities, residential
24 neighborhoods, farms, pivots for irrigation, ponds,
25 wetlands, archaeological resources.

1 We take all of that data into a database, and
2 then we go through what's called a macro routing analysis
3 that actually tweaks and moves that line either one way
4 or the other to miss those environmental or sensitive
5 resources or populated areas.

6 So when the Commission mentions, you know, we
7 site the pipeline to minimize impacts as one of the
8 requirements, that's what we do. That's the first step
9 we do is we go through that analysis.

10 A lot of you have seen our surveyors in the
11 field. We have environmental crews, archaeological
12 crews, as well as civil surveyors. Those people are
13 surveying to pick up the physical constraints on the
14 ground -- we call micro routing -- to then further define
15 that route so that at the end of the day when we make our
16 Application to the State we have taken all the various
17 factors and stakeholders and constraints into
18 consideration, and that's what delineates our route.

19 So it's very methodical. It's very planned.
20 It's not arbitrary. It's not discriminatory. It's this
21 is how we get from point A to point B to minimize impacts
22 to the most amount of stakeholders and environmental
23 resources as we can.

24 I hope that helps explain some of how we get
25 from point A to point B. And I know that doesn't make

1 everybody happy, but that's how we do it.

2 As far as right of way goes, we're asking for a
3 50-foot permanent easement. That means 50 foot across
4 the various properties that will be a permanent -- some
5 type of contract between us and the landowners. That
6 will spell out certain terms for use of that property.

7 We are also asking for somewhere between 25 feet
8 and 100 feet of additional workspace that's called
9 temporary construction workspace that we'll utilize just
10 to build the pipe. And then at the end of the use of
11 that after restoration, we will just -- we'll have a
12 residual 50-foot-wide swath. That's where the pipeline
13 will sit, basically in the middle.

14 The pipe will be buried in nonagricultural
15 areas no less than 36 inches. In ag areas 48 inches.
16 And then under roads and ditches and streams no less than
17 60 inches or deeper.

18 When we're approaching the landowners to talk
19 about easements, compensation, and temporary workspace
20 we've gone through -- what we've done is a market study
21 that takes into account the comparable sales of property
22 in this area and on a county-by-county basis to generate
23 what the value of the property is on a sales basis.
24 That's our starting point. It's an average. It doesn't
25 take into account site-specific conditions.

1 Our right-of-way agents then talk to the
2 landowners about the valuation of the individual
3 property. And we'll go through an appraisal process, and
4 that's how we delineate what that cost is for the
5 permanent easement.

6 We take that, multiply it by the acreage
7 impacted, and then apply it to both permanent and
8 temporary workspace. So it's very formula based, and
9 it's a discussion and negotiation on a one-on-one basis.
10 We also pay damages for crops if we impact crops or your
11 property to compensate the landowner.

12 We anticipate construction to last one
13 growing season. That's why we're paying for the damage
14 100 percent year one. We do anticipate it will take at
15 least two seasons to get through restoration and maybe
16 even three. But the real construction will happen year
17 one.

18 And so we're offering and we will compensate
19 landowners right up front 100 percent year one,
20 80 percent year two, 60 percent year three.

21 So this slide shows -- it's a little bit fuzzy.

22 Has it all been fuzzy? It's clear on my screen.
23 Sorry about that. Does that look better?

24 Well, what's important on this slide is this
25 stack of soil over here, this is where we will place the

1 topsoil. So as we enter on to the property we will strip
2 the topsoil off the land to isolate and protect it
3 throughout construction. We know that's the most
4 valuable or most important part of your operation because
5 this is what grows your crops.

6 So we move it off to the side. We protect it.
7 That's the first thing we do. And then also the last
8 thing we do is we put that back onto the fields so we're
9 minimizing the disturbance to that soil along the way.

10 The other important part is the depth of the
11 pipe, which I talked about. And this is a drain tile as
12 an example. If you do have drain tiles, we will have no
13 less than 2 foot of separation between our pipe and that
14 drain tile to give as much distance to minimize
15 interference as possible.

16 That's very site specific. We'll work with each
17 landowner individually to determine where those are at
18 and also to figure out a crossing plan to minimize those
19 impacts.

20 Which brings me to we have developed and are
21 working on a site-specific or global Agricultural
22 Mitigation Plan that will then be delineated into a
23 site-specific agricultural plan for each property that we
24 cross that will spell out how we're going to enter to the
25 property, construct, and then restore that agricultural

1 land.

2 So the reason to do that is to be up front, to
3 negotiate, to also put forward that experts -- we build
4 pipe. We operate pipe. We're not farmers. So what we
5 want to do is talk to you, the landowners, the farmers.
6 We've hired a couple of experts, a company called
7 Key Agricultural Services and another company called
8 DuraRoot.

9 They're local regional experts in agricultural
10 issues. They're not pipeliners. They're the bridge
11 between us and you to help us come up with the best plan
12 to minimize impacts to your properties and farms. All of
13 that will be presented in our easement documents and part
14 of our negotiation, and that's something we will work on
15 together as we negotiate and get through this easement
16 process.

17 Lastly -- and not because it's the least
18 important. It's actually the most important. So this is
19 kind of the message we want to leave you with is our
20 pipeline operations and safety.

21 This pipeline will be controlled, reviewed,
22 evaluated, observed. There won't be a minute of any day
23 that goes by that we will not be evaluating and
24 monitoring this pipeline. 24/7, 365 days a year we
25 monitor and operate our pipes. That's done by a couple

1 of systems, electronic, remote systems. One's called
2 SCADA. We're actually communicating with that pipeline
3 via sensors that tells temperature, flow, pressure that
4 we can communicate and actually see that data as well as
5 operate the valves, to open, close, or operate the pump
6 station.

7 We have a leak detection system that actually is
8 a model that goes through detailed algorithms that
9 calculate how that pipeline's supposed to be operating
10 and compare to actual conditions. It gives us early
11 indication if there's a leak or issue so we can take
12 action.

13 We have employees in the field that are
14 evaluating this. A couple of the other things we do is
15 we have aerial patrol. We fly the pipeline every
16 10 days, weather permitting. Sometimes we can't do it,
17 but most of the time we fly it every 10 days with a fixed
18 wing aircraft no less than 26 times a year.

19 We participate in the One-Call System. So the
20 call before you dig, I know a lot of you know what that
21 is. It's the 811 number. We respond to those. We come
22 out and mark our pipe to minimize third-party damage.

23 And we educate the public. Every year when we
24 go into operations we will meet with emergency
25 responders. We will meet with the public for those that

1 are interested where we go over our emergency plans, our
2 operating procedures, where our equipment's located, and
3 talk about those things to make sure that the public's
4 educated on how we operate our pipeline.

5 And the last thing we do is we will develop and
6 issue what's called an Emergency Response Plan, and that
7 plan is required by federal law under Department of
8 Transportation or Pipeline and Hazardous Materials Safety
9 Administration, or PHMSA.

10 This plan is developed. It spells out
11 everything about the operations of the pipe, the safety
12 systems. There are emergency response equipment,
13 techniques, procedures. That's turned in to the Federal
14 Government as well as to the local emergency responders.

15 We train on it. We train the public. We train
16 the emergency responders. We train ourselves. We drill
17 on it. So if something was to happen, we're prepared.
18 This plan will again be given out to the emergency
19 responders and to the Federal Government, and it will be
20 employed on a daily basis should -- not daily meaning --
21 those are the techniques we would utilize in the event of
22 an emergency, and we're prepared to protect the public as
23 well as the private property out there.

24 With that, I'm going to sit back down, and
25 myself and our team are here to answer any questions, if

1 you do have them. We encourage them. Again, I would
2 like to thank you for your time this morning, and I
3 appreciate the attention.

4 CHAIRMAN NELSON: Thank you for the
5 presentation. We appreciate that.

6 We have scheduled up to three hours for this
7 hearing. I began by taking a few minutes of laying out
8 the process that we're going to be going through. The
9 company has taken some time to explain the project to
10 you. The entirety of the rest of our time is yours.

11 It's time for you to ask questions, make
12 comments, find out the things that you want to know about
13 the project or about the process.

14 A couple of things that I'd just like to remind
15 you of. We've got a couple of individuals with wireless
16 mics. and we'll just have you raise your hand and they'll
17 get a mic. to you and you can speak from where you're
18 at.

19 Again, begin by giving us your name, spelling
20 your name, and in deference to our court reporter, don't
21 talk like an auctioneer. That makes her nervous.

22 The last thing I would say is, again, 1:30 is
23 kind of our hard deadline because we've got to get to
24 another hearing in Sioux Falls. So let's be respectful
25 of everybody. We want to make sure that everybody that's

1 here that wants to speak has time to speak.

2 And so, with that, who wants to be the first
3 commenter or questioner?

4 Jay.

5 MR. GILBERTSON: Thank you.

6 Jay Gilbertson, G-I-L-B-E-R-T-S-O-N. I'm with
7 East Dakota Water Development District, and I guess it's
8 a question for the sponsors.

9 At several points as the pipeline moves through
10 Kingsbury, Lake, and Minnehaha and you're undoubtedly
11 going to be crossing areas that those counties have
12 identified and provided protection -- have provided
13 protection under county-issued ground water protection
14 ordinances.

15 And I guess my question is were those -- was
16 that part of the process in identifying places to cross
17 or places to route the pipeline?

18 MR. MAHMOUD: Thank you for that question. And
19 I forgot to mention -- and I'll answer your question --
20 if anyone has any questions, detailed questions about the
21 property that we can't specifically answer because we
22 won't know every detail, we have some maps in the back of
23 the room that after the meeting we have some right-of-way
24 agents that can help you isolate and look at those
25 individually. So I apologize for not mentioning it

1 earlier.

2 Specifically to the water protection areas,
3 absolutely. Those were taken into consideration.
4 Several of our reroutes that we have actually are for
5 that exact issue, to move around those water protection
6 zones.

7 So I'm asking Monica, our environmental
8 specialist.

9 At this point we're not within any water
10 protection zones with the pipe. We've been able to move
11 outside of those.

12 MR. JOHNSON: Good morning.

13 My name is Charles Johnson, C-H-A-R-L-E-S,
14 J-O-H-N-S-O-N. I'm a farmer from southern Lake County,
15 Orland Township.

16 I have three or four major concerns, and I guess
17 I would like to address them more closely to the
18 Commission itself. One is we're taking the word of a
19 company that's an LLC as far as what's going to be done
20 here in the next several years or years to come.

21 Actually to put money behind what they say or
22 what their words are, I would encourage the PUC and the
23 State Legislature to consider major bonding for this
24 project. I don't think that we have to -- in this time
25 and place of the world we can be pro business by asking

1 that we have indemnity up front rather than having to go
2 through litigation if there is a problem.

3 We've seen in Montana -- here just last weekend
4 in Glendive, Montana, that accidents do happen. Mishaps
5 do happen. And I don't think that the city or those
6 landowners or those residents have got to go through
7 litigation to find remedies.

8 There should be bonding up front paid for by the
9 company. You know, if you play poker, you've got to ante
10 up. And I really think that we need to have bonding in
11 this state for this pipeline.

12 Secondly, at some point this will be old
13 technology, whether it be in 20 years or 200. And
14 there's going to be a major amount of steel 4 feet under
15 the ground for all of these landowners and operators.
16 Where is the money or the finances to do decommissioning
17 of this project? And, again, I would encourage that
18 there be bonding in place for that project.

19 Thirdly, whenever I rent land -- as a farm
20 operator I do -- I pay rent every year for the privilege
21 of obtaining or at least the opportunity to make profit
22 on a piece of land. I don't think it's enough for a
23 company to enter onto a landowner's property, pay a
24 one-time permanent easement, and then make plenty of
25 profits at the benefit of that landowner or that

1 operator.

2 I really think that the Legislature and the PUC
3 should encourage that royalty payments be made on an
4 annual basis, on a continual basis, to the landowner and
5 to the operators of that land where the pipeline
6 crosses.

7 A fourth concern I have is more parochial. On
8 the tract of land where it's going to cross where I
9 operate -- my brother and I operate 2,400 acres of
10 organic land in southern Lake County. The tract that
11 they're going to be crossing on our property contains
12 multiple tile lines, much of it patterned tile, which
13 means about every 50 feet to 100 feet there's four-inch
14 perforated tile.

15 I haven't studied it closely. I don't exactly
16 know where the line is going to come across the property.
17 But there's a potential of probably severing anywheres
18 from 30 to 50 tile lines anywheres from 4 inches to
19 8 inches wide in that half-mile.

20 Now I'm enough of a farmer that I know over the
21 years that soil settles if you trench it. I also know
22 that a lot of water districts like Kingbrook Rural Water
23 are finding resistance from operators that have existing
24 tile to try to put their own pipelines.

25 But soil settles over years, and most of the

1 field tile or drain tile operates on a gravity system.
2 And it's maybe only a few inches per thousand feet. And
3 what happens to all of that tile line? Even if it's
4 mended, as the soil settles it's going to crink those
5 tile lines down and make that tile lines inoperable. All
6 to the detriment of the operator and the landowner.

7 Secondly, that's perforated tile in most cases.
8 That tile line is designed to take away liquids, which in
9 most case water, restoring the water table to the land.
10 What we've done is we've placed a potential for a hazard
11 material to leak and to be within a few feet of
12 perforated tile, which then can carry that hazardous
13 material miles down the road in a quick hurry to rivers,
14 streams, creeks, wherever that tile is going to drain
15 into.

16 So it's not going to be a site-specific problem
17 anymore. It's a problem that could be carried downstream
18 within a matter of hours, affecting the water of
19 different residents and people.

20 So those are four major concerns I have. And I
21 really think that if we're going to operate this pipeline
22 in this state, we need to make it right up front in a
23 very businessman-like sense to the operators and the
24 owners of farmland.

25 They need to be compensated. They need to be

1 assured that there's protection with the money behind
2 this operation in the bank specifically.

3 I also want to note -- and maybe I'll be
4 corrected in form, but I understand that the permit
5 Application is with Dakota Access, LLC, which is a
6 subsidiary of Energy Transfer Partners.

7 LLC is a limited liability corporation. So, as
8 I understand it, if there is a spill, or if there is
9 financial problems, the responsibility will be limited to
10 just Dakota Access, LLC. And what is the assets and the
11 financial resources of Dakota Access, LLC?

12 Is it just steel four feet buried below the
13 ground when the time comes? Is Energy Transfer Partners
14 going to be on the line from a litigation standpoint to
15 provide responsibility to the pipeline and to the owners
16 and operators of that land?

17 So I pose some questions here. I'm directing my
18 eye attention to the Commission because you're, in fact,
19 the steward of our resources here in the state. You are
20 the stewards of the people who live on this land and live
21 and work here, and I would really hope that you take
22 responsibility to protect us and to protect our resources
23 and to address these issues of what I consider from a
24 very businesslike type atmosphere.

25 So thank you.

1 CHAIRMAN NELSON: Thank you. You've asked some
2 good questions.

3 I'm going to turn to the company first because
4 some of these questions I've heard answered by the
5 company in our two previous meetings. And then I've got
6 some comments that I want to make on behalf of the
7 Commission.

8 MR. MAHMOUD: Okay. Well, thank you. There's
9 no way I will get all of that, by the way.

10 You know, overall just from a big picture
11 standpoint, if we all take a step back and say how are we
12 going to get crude oil from point A to point B to sustain
13 our livelihood in a carbon-based society, that's what
14 we're up against here.

15 So anything we do -- and I'm not trying to dodge
16 a bullet here, but when we do things that are not
17 conducive to facilitating that goal and we add burdens
18 that lead to the -- it becoming noneconomical, we all
19 suffer.

20 So as we would do certain things that may sound
21 good in theory but then ultimately discourage developers
22 from developing and putting in pipelines and exploring
23 for oil, it hurts every one of us. You, me, your family
24 members, your neighbors, we all suffer from higher fuel
25 prices.

1 We're all lucky right now. We have less than
2 \$2 gasoline. Let's be thankful for that and then plan
3 for the future to ensure we have a sustainable society
4 that's based upon carbon, if you like it or not, that we
5 have to live with and find resources to provide that
6 reliable supply as opposed to unreliable imports from
7 foreign sources.

8 I'm just going to kind of get that out there.
9 Because we are very much so proponents of energy
10 independence of this country and doing that in an
11 economical manner.

12 When we talk about bonding, that's not something
13 that normally occurs. We're not subject to bonds on any
14 of our pipelines from 71,000 miles to bonding to a state.
15 We're required -- there's a lot of laws out there, both
16 from a state perspective that talk about liability.

17 A limited liability corporation does not limit
18 your liability when it comes to a spill when it's
19 specifically on oil, when it's being transported. That's
20 a misnomer. It's not a true statement.

21 We are liable from a corporate perspective.
22 Dakota Access is a pipeline company, an LLC that was
23 formed as a single business unit to do one thing: To
24 contain and isolate the business practices of that unit
25 from a management perspective. It's a joint venture

1 between Energy Transfer Partners and Phillips 66.

2 So it's just a mechanism to do business under
3 that makes and facilitates an easier process to do that
4 business. It's not to dodge the bullet or to limit
5 liability. Because we are on the hook from a liability
6 standpoint. We don't escape a single responsibility by
7 having LLC after the name.

8 A lot of you probably have LLCs after the name
9 of your farm, and you are responsible as that landowner
10 and owner of that equipment and those operations for what
11 your actions are, just like we are. It's the same
12 structure, same rules apply.

13 When we talk about -- and we'll talk about
14 bonding a little bit more. We are required, as the
15 Commission will point out, to post road bonds to ensure
16 that we leave the roads in the same condition as we
17 utilize them. I know that wasn't a specific question,
18 but that's something that is part of the bonding to
19 ensure we do a good job when we leave the neighborhoods
20 as we found them.

21 We are good stewards to the environment. We are
22 good stewards to the landowners. If we do something, we
23 absolutely step up and take care of that. We have the
24 financial resources. We're a multibillion dollar
25 company. We have not only the financial resources of our

1 overall organization, we also have insurance.

2 There are also federal programs that we pay into
3 as a transporter of crude oil. We pay 18 cents per
4 barrel, by the way, into a federal fund should we not be
5 able to step up and take care of our business in a
6 professional manner or a manner conducive to whatever the
7 environmental agencies want us to in a spill situation.

8 They will take over. I promise you. The EPA or
9 one form of the government will take over that clean up.
10 We are then responsible for and have to repay the
11 government for any expenses that they incur or the public
12 incurs.

13 So we are on the hook, have the liability, and
14 are responsible for anything we do. The landowner does
15 not carry that burden. The landowner never carries that
16 burden from now and forever.

17 If we abandoned that pipeline, we clean it. We
18 remove all the hydrocarbons. We purge it. And then we
19 put some type of inert material, typically nitrogen, into
20 that pipeline to make sure it's not a hazard to the
21 landowner.

22 Crossings where we have a road or we have a
23 river crossing we typically will do what's called
24 grouting of that pipeline. We'll refill the pipeline
25 with some type of grout so if it ever does collapse --

1 because the steel will actually decay over time.
2 Hundreds of years, but in those situations we will do
3 those things.

4 I'm trying to remember what else was asked.

5 CHAIRMAN NELSON: The last question dealt with
6 the tile lines and how you can ensure that those tile
7 lines are going to maintain their proper elevation and
8 angle as soil settles.

9 MR. MAHMOUD: Great. Thank you very much.

10 We do have -- as part of our Agricultural
11 Mitigation Plan that we are working with the landowners,
12 we do have a plan to cross the tiles. We absolutely
13 understand that when we go through there we disturb the
14 soil, we put it back, that there probably will be some
15 settling over time.

16 The farm equipment that you utilize today is as
17 heavy or heavier than the equipment we will employ on
18 this pipeline. The combines are giant. They're as big
19 or bigger than equipment we use. So you're already
20 putting that downward pressure onto those tile lines that
21 we would exert onto those same tile lines.

22 When we disturb it, though, if we do have
23 sluffing or sagging or impacts, we absolutely will come
24 back in and fix those. We put them back. We repair
25 them. We'll strip back outside the right of way, if

1 necessary, to make sure that we repair that tile line
2 such that it does flow. We'll test that tile line. And
3 then if we have long-term impact, we'll come back and fix
4 it.

5 And that's where that relationship between
6 landowner and company come into play. We don't leave the
7 landowner hanging out there with a messed up tile system
8 in their field. If we disturb it, we're going to fix it.

9 I can tell you I've had this conversation with
10 our CEO of our company and explained to him -- because he
11 didn't know what a tile line was. That's a corporate
12 commitment and something that we will absolutely stand
13 behind long term.

14 And I think the last thing that was asked was
15 talking about royalty payments. That's not very
16 customary in a pipeline. I don't know anybody that pays
17 a royalty payment, except maybe on a tribal land. That's
18 a sovereign nation.

19 In the United States and South Dakota easements
20 are paid on a one-time basis. When we start talking
21 about the legality of that and why is that such, I can't
22 give you all the legal remedies of why, but it is on a
23 one-time basis. And that's how we propose to compensate
24 the landowners as we move forward.

25 CHAIRMAN NELSON: Thank you. I'd just like to

1 add a couple of comments from the Commission's
2 perspective. Mr. Johnson mentioned bond several times.

3 State statute and state law is what guides how
4 we have to operate as we work through this docket
5 Application. State statute gives us specific authorities
6 to require bonds for remediation of roads, should the
7 company fail to do that properly.

8 In both the Keystone and Keystone XL Pipeline
9 permits that was one of the conditions. We required the
10 companies to post a bond, and then at such point as the
11 local governing bodies assured us that the roads had been
12 properly repaired, then those bonds were released.

13 The flip side of that is the Legislature has not
14 given us authority to require bonds for the operation or
15 the operational period of the pipeline. And Mr. Johnson
16 correctly mentioned several times, you know, the
17 Legislature should look at.

18 Well, whether they've looked at it or not, I
19 don't know, but they've not given us the authority at
20 this point to require that type of bonding.

21 Similarly, dealing with an easement versus an
22 annual royalty, the Legislature has not passed a law
23 saying in South Dakota it would be an annual -- a
24 requirement for an annual payment as opposed to an
25 easement. At this point that's something that is

1 contractual, a relationship between the company and the
2 individual landowners as to how that will take place.

3 And so a couple of the issues that he talked
4 about certainly are within the Legislature's purview.
5 Whether they will make changes that will move in the
6 direction Mr. Johnson's asking, that's up to the
7 Legislature.

8 I do want to comment on the tile lines. And I'm
9 an agy. I don't have tile lines on my property, but I'm
10 an agy and I'm very sensitive to that. And that's
11 something that we will definitely be looking at and
12 asking some additional questions about. So I appreciate
13 that.

14 Who's next?

15 MR. WALKER: My name is Craig Walker.

16 C-R-A-I-G. Walker, W-A-L-K-E-R. I am from southern
17 Lake County, also Orland Township.

18 Listened to the proposal and have talked to
19 several individuals who have indicated that in
20 Miner County this is -- the project that went through
21 there a few years ago was done very professionally. We
22 assume that the same would be done in this case.

23 But I do have a question in regards to
24 compensation. Commissioner Nelson just indicated that
25 that's an issue between myself, the landowner and the

1 company. You've laid out your protocol for establishing
2 that. And I understand that, but it is a negotiated
3 situation from my perspective.

4 And I did some quick math, and I guess I'd like
5 you to please speak to my calculation so I can go home
6 and tell my wife that I did the best I could. Okay.

7 So I anticipate that -- I've had an offer made
8 to me. The staff that did that were very professional in
9 making that presentation. And what it kind of came down
10 to was I'll be getting approximately \$25 per foot.

11 During your calculator presentation you
12 indicated that 47 million dollars would be allocated to
13 the State of South Dakota. If I take that to a per foot
14 basis, it comes out to approximately \$32 per foot. So I
15 wasn't too far off in this deal.

16 Ultimately, based upon information I read in our
17 local newspaper and restated here, there will be
18 approximately half a million barrels a day of crude
19 coming through the pipeline.

20 I did some research and found that the cost of
21 moving a barrel of crude right now is approximately
22 \$8.44 per barrel to go from western North Dakota to
23 southern Illinois. I'd like to find out if that is
24 approximate correct. And then the other thing I need to
25 find out from you is what is the approximate cost that

1 you anticipate of moving a barrel of crude?

2 Now I took a wild guess, and I'm assuming that
3 you'll be able to do it for a lot cheaper than what rail
4 or surface transportation will be able to do. And so I'm
5 assuming, right, wrong or indifferent, that somebody's
6 going to make about a \$4 profit.

7 On the \$4 profit on a half a million barrels a
8 day times a year's time is 720 million dollars. The cost
9 that you're going to be paying and I estimate to all the
10 landowners up along the 1,130 mile-pipeline or
11 approximate 6 million feet would be about 360 million
12 dollars.

13 As I look at that, sir, 360 million dollars
14 divided by a 720 million dollar potential profit in about
15 six months all the landowners should be satisfied and
16 that's -- that's a good deal for your stockholders, but
17 I'm not sure that that's enough compensation from my
18 perspective.

19 And so that's one of the reasons I came here
20 today is to say, you know, how sharp is your pencil? I'm
21 a businessman and every day I have to deal with
22 individuals and they say you better sharpen your pencil
23 or I'm not going to do business with you.

24 Now I also recognize in visiting with my local
25 state legislator he said, Craig -- I asked him to do some

1 help and research, and he said this is something that you
2 can't stop so I don't intend to stand at the fence and
3 stop. But I do intend to demand that we sit down and
4 negotiate perhaps a little harder on compensation.

5 The other area of concern is if it would come to
6 litigation, where is that litigated at? Is that
7 litigated in the State of South Dakota or in -- at the
8 company headquarters potentially in Texas?

9 And then the final question I had to go along
10 with Mr. Johnson's question is dealing with tile. And I
11 actually will have to direct this question a little bit
12 more towards my local County Commissioners.

13 Currently, I don't have a lot of tile in place,
14 but I also might want to get that done or at least
15 address ahead of time or in conjunction with this tile
16 coming in. And so I guess I'll want to find out
17 specifically if there are some allowances and tolerances
18 to address tiling in the pipeline area ahead of the
19 construction phase of this project.

20 I think that's all I have. Thank you for your
21 time.

22 MR. MAHMOUD: Okay. I was going to say you're
23 going to have to take a break and let me catch up.

24 Great questions. Thank you. You've obviously
25 put a lot of time and thought and articulated your

1 questions very well. I'm going to start in reverse
2 because I think I can remember best that way.

3 On the tile lines, absolutely. If you have --
4 and that's a tough one to commit to, but I'll tell you if
5 you have plans for your tile lines where you're working
6 with the ag commission or you're working with a
7 contractor and you have a plan that's laid out, if you'll
8 share that with us, we can make those accommodations
9 now.

10 Once we construct, however, we cannot -- you can
11 still put a tile line in. We just can't guarantee 2 foot
12 of separation. But crossing the pipe with the tile line
13 above or below, that's not a big deal for us. So we will
14 definitely work with you there, and if you'll give us
15 your plans, we'll try to work with you to accommodate it
16 now.

17 Going backwards, as far as the compensation and
18 profitability of the company, I can't answer that. I
19 mean, even if I could, I mean, that would be information
20 that would be proprietary that would have to be
21 disclosed -- and the FCC, and I can't do it. I will tell
22 you if we make that type of profit, we'll be very happy.
23 I don't think so.

24 But at the same time you're right. I mean, this
25 is -- we are risking 3.8 billion dollars of our capital

1 to build this pipeline and taking the risk of building it
2 and operating it, all the liabilities that are associated
3 with that. So it's multibillions of dollars that are at
4 stake here.

5 As a businessman, you understand profitability,
6 and you certainly would expect a return on your
7 investment. And that's what we're expecting. I don't
8 know what that ultimate dollar is going to be, but if
9 we're investing that kind of money, we certainly expect a
10 profit. We're not here to take advantage of anybody.

11 Your calculations are pretty close. \$25 a foot
12 is about right as an offer. That's obviously negotiable,
13 depending on your specific property. Our right-of-way
14 guys are here. Our head of right of way is sitting here
15 with me. And after the meeting we can certainly talk.
16 It's a starting point where we can negotiate in good
17 faith to come up with what that value is.

18 Everybody's property is different. Values are
19 different on a per property basis because you may have
20 drain tiles in your field that improve your production
21 versus your neighbor that does not. And you may have
22 other improvements that your neighbor may not. So each
23 value is different, and that's why we do an independent
24 appraisal or evaluation on a per property basis, and we
25 talk about it individually with the landowner.

1 So we would be more than happy to continue
2 those discussions and hopefully can reach an agreeable
3 deal.

4 And then litigation. Thank you. Litigation
5 would be done. If we had to go to a condemnation, and I
6 hope we don't, our company prides itself in not having to
7 go to litigation or not having to rely upon eminent
8 domain.

9 I can tell you personally the projects that I've
10 been in charge of, and I've run all of our big projects
11 in our company -- anything that has a B for billion
12 dollars is something that falls under my control, and
13 over 2,000 miles that we've put in over the past four
14 years have not condemned one individual.

15 So we are a very good company to work with. We
16 pride ourselves in negotiating in good faith.

17 We will respect everybody in this room and
18 everybody that's not in this room to reach a fair deal.
19 If we can afford it, we will do it. I give you that
20 promise.

21 If we do have to get there, which I hope we
22 don't, but if we do, that will be done here in the State
23 of South Dakota.

24 CHAIRMAN NELSON: Other questions or comments?

25 MR. SNYDER: Hello.

1 MY name is Kelly Snyder K-E-L-L-Y, S-N-Y-D-E-R.
2 What's in it -- what do you mix with it to make it flow?

3 MR. MAHMOUD: I'm sorry. We have this blower
4 that's making it really hard for us to hear. Can you say
5 it one more time louder.

6 MR. SNYDER: What do you mix with it to make it
7 flow through the pipeline?

8 MR. MAHMOUD: Okay. Typically, it's just the
9 crude oil. And sometimes we'll add what's called a
10 drag-reducing agent to actually reduce or to make the
11 crude oil less viscous so it flows easier.

12 And, Chuck, do you want to expand on that?

13 MR. FREY: Yes. The Bakken crude oil generally
14 has the consistency of -- diesel fuel would be kind of
15 what you can think of. So there's not anything we need
16 to add to it to make it flow. As Joey mentioned, we will
17 sometimes add a drag-reducing agent to reduce the
18 friction loss in the pipeline.

19 But these drag-reducing agents we're talking
20 about parts per million injection rates so it's a very,
21 very small quantity that goes into the materials just to
22 help it flow a little easier.

23 MR. SNYDER: Thank you.

24 MR. HOYER: My name is Dale Hoyer. D-A-L-E,
25 H-O-Y-E-R. And I'm concerned.

1 You said you just picked up the pipeline path --
2 the pipeline, where it would go to where you wanted it to
3 go. I would question why it -- just looking at the map
4 you have presented, but the map shows that you cross a
5 reservoir in North Dakota with the pipeline. You cross
6 one in South Dakota, Oahe Reservoir. I don't know how
7 you do that, but the water quality impact is very
8 important.

9 It's important. A lot of wells come in this
10 ground. I know you don't monitor the line 100 percent of
11 the time unless you're concerned about leaks. So we also
12 need to realize that you need to select a route that is
13 less risk free.

14 What I have for information and what's done in
15 my area, your environmental and economic impact was not
16 considered. It shows no evidence of doing the least
17 impact.

18 If you change that -- can you consider on an
19 individual basis that that impact would be changed? In
20 my case, it goes right through my yard, the one you
21 marked out, and it goes through sewer lines, water lines,
22 electrical lines, all underground. And if it lines up
23 correctly, it's going to destroy also three tile lines.

24 And you can casually put it back together, but
25 the gentleman was very right. You've got to have it

1 right the first time or it doesn't work. You go back and
2 fix it up, you've probably destroyed more. In the
3 settling you'd have more crop loss, that you obviously
4 have to go to the field, the spot where the tile is.

5 But you also -- varying soil compaction with the
6 type of soil you're doing. So you can't set up a
7 standard for that either.

8 The third thing we have is many farmers are
9 doing this. We talk about how it's going to be the same
10 as machinery. We go -- in compaction on our farm we go
11 over the soil as little as possible, field track it, and
12 go over it rapidly. We don't sit in one spot, dig
13 holes. When we do that you've got compaction that lasts
14 10 years.

15 So that's not even mentioned compensating.
16 You're talking about 100 percent the first year and I'm
17 supposing you're going on a rent basis but you're going
18 on 80 percent and then 60 percent.

19 That line goes diagonal through every field.
20 You'll create, the first year, diagonal lines. For
21 headlands that's wasted crop. For turn lanes that's
22 wasted crop. You have to plant more headlands because
23 you cannot get the turn done with the machinery under a
24 normal straight angle. So those things haven't been
25 considered.

1 In my area -- and I've done a 10-mile survey of
2 the stretch -- that line could have been moved
3 three-quarters of a mile west and not impacted anything.
4 Instead, it's going through farmsteads, through shelter
5 belts. That's not being environmentally friendly at all.

6 Now I don't know how negotiable the line is, but
7 you look at your map on page -- I believe it's page 6,
8 Miner County. Why did you make a jog on Beadle County
9 northeast of Huron? I think that would be the center of
10 Beadle County, I believe -- well, it's hard to read.
11 It's the name of the county, but Huron is in about the
12 central part of that.

13 But there was no reason -- either line, if you
14 took a straight line down from where you started it, you
15 took a 6-, 7-, 8-mile jog to the east, went through the
16 good farmland in South Dakota, and came back at the
17 Sioux Falls point so that if you drew a line straight as
18 you said you did, you would have come through the
19 northwest corner of Miner County instead of the
20 northeast. That's about where the variation is.

21 I just put a ruler on there today. That doesn't
22 make sense. The environmental impact the further you go
23 east to agriculture is tremendous. The crop ratio is
24 probably double yield as you go east of Miner County.
25 West it would be in the 50 percent or less range. That's

1 yield production.

2 Now I don't know how you change it, but just
3 quickly if you took a line from the star on your page 5
4 and went straight down to your goal, you would have been
5 moving that line continually over and it would have been
6 shorter in the long run than you do it as it is, with no
7 reservoirs to go through, over, or under, whatever you
8 do.

9 And this may be to the PUC. The wisdom of
10 putting that money and the crude into Houston kind of
11 escapes me when we want to use that money right here in
12 South Dakota and surrounding agricultural production
13 areas, Iowa, Minnesota, and so on. North Dakota, eastern
14 also. And into Nebraska and Kansas.

15 That's where a lot of that will get used. It
16 has to be -- sometimes we're in short supply, the bid
17 goes up. Why put it into what I -- should I say marked?
18 It's discussed in politics. One of the marked terrorist
19 areas to hit if we have that type of impact in the
20 United States. Well, we've had the Twin Towers so we
21 know we have that impact.

22 But if you spread that out, it wouldn't impact
23 our production near as much. I'm wondering how the
24 PUC -- if there is any research into an alternate source
25 of refinement.

1 This looks like it would be a wise program in
2 the future. And we don't know what that future is, but
3 we're talking 20, 30 years on this pipeline. So
4 something to think about. That's something to think
5 about where the wealth goes.

6 The wealth of developing our own resources in
7 our own given area where it is consumed is a savings
8 beyond anything that any oil cartel will ever give you.
9 And talking about -- if you're talking oil money, you're
10 talking Houston, Texas and the surrounding area.

11 So you have a large economic cluster that are
12 benefiting from this. That was raised here a little
13 while ago, but that's -- that is something that is given
14 to -- they wouldn't be up here trying to build a pipeline
15 if they didn't know where it was going to go, and they
16 know that they can export crude any place -- sorry. They
17 can export refined oil any place in the world.

18 And you go down there and bring it back up here
19 you're going to always pay the oil price. It's something
20 to think about.

21 Well, I've taken long enough, but I'll go ahead
22 with you.

23 CHAIRMAN NELSON: I'd like to ask just one very
24 specific follow-up question.

25 Very early in your comments you said the

1 pipeline was slated to go right through your yard. Can
2 you expand on that?

3 How close to your house? How close to a barn?
4 Are we talking about going through a feedlot? Can you
5 give me just a picture of that?

6 MR. HOYER: Certainly. It's an interesting
7 process that's been going on. And it makes it sound like
8 they're all up front and concerned about you.

9 I caught a pickup going around the roads and the
10 neighborhood and he had some instruments in it and I
11 asked stopped and asked him what he was doing. This was
12 last summer. Probably late June or early July. And he
13 says oh, I'm just looking at roads for the county. And I
14 said --

15 CHAIRMAN NELSON: If I could just stop, I'd like
16 a specific answer to my question. How close is this
17 slated to your house, your barn, your feedlot?

18 MR. HOYER: Well, that's what I'm getting to.
19 This was the initial survey by this company. I found out
20 later. Okay. No -- in secret. When they came and drove
21 stakes about two months later that lined right up to go
22 through -- I took the stakes and took all three stakes,
23 lined them up and took them out a mile and a half out the
24 other way, and that went between my house and my
25 workshop, which they are approximately 40 feet apart.

1 It goes through my new shelter belt that was
2 20 years -- planted 20 years ago. It cuts all the
3 communication, phone lines, everything between myself,
4 the house, in other words, and the shop where I do work
5 and do business. And I still farm so I'm getting
6 messages in and out all the time.

7 And I have electric lines and propane gas to
8 heat my house going through there. And I have the sewer
9 going out of the house. It looks like it hit the septic
10 tank. It's just unbelievable that they even put a stake
11 in there. So nobody cared, obviously. That pretty much
12 covers the question because I did the survey for that
13 very same reason. My own survey.

14 CHAIRMAN NELSON: Thank you. If I could get the
15 company to respond, obviously there were some questions
16 regarding the overall routing in this area, starting up
17 in Beadle County, the jog.

18 I'm particularly interested in what he's just
19 said about this going between his house and his shop.
20 Please talk to me about that.

21 MR. MAHMOUD: Sure. I think I -- as I mentioned
22 earlier in the presentation, when we route the
23 pipeline -- and you're right. We started with a straight
24 line -- the thing that we look at is we take all the
25 constraints into consideration, and we balance those

1 out.

2 And I know that not everybody likes to hear
3 that, but when we move the pipe from one landowner to the
4 next that's what's called transference of impacts. And
5 so that becomes an arbitrary decision to move it from one
6 person to the other, and that's not something we do.

7 And I know it doesn't sound fair to the person
8 that the pipe landed on their property. But there's a
9 reason that led us to that conclusion. And that was
10 purely based on technical attributes to minimize the
11 impacts to the most people, to the most resources and
12 stakeholders involved, and it may or may not result in
13 the best route for you as an individual but it does for
14 the greater population or stakeholders along the route.

15 As far as this gentleman's property, I can't
16 tell you, sir, exactly. I don't know where you live, but
17 I will tell you there's not a single place along this
18 pipe where we are within 40 feet of a house. I will tell
19 you that as a fact.

20 So I don't know if we've surveyed on your
21 property or not. It doesn't sound like we have. So if
22 we could, I think the best solution would be for us to
23 meet with you to survey on your property. If there is a
24 minor route adjustment, we can do those.

25 But I know we're not within 40 foot of any

1 house. I know that for a fact. We're not within
2 150 foot of any house along this pipe.

3 CHAIRMAN NELSON: Well, let me ask a very
4 specific question not only related to what he's related
5 but to anyone. I mean, are you going through people's
6 farmyards?

7 MR. MAHMOUD: I can't answer that 100 percent,
8 but I seriously doubt it. There could be --

9 CHAIRMAN NELSON: I will tell you that's an
10 answer that I will need to know as we move through this
11 process.

12 MR. MAHMOUD: Sure. And it could be that
13 somebody's farmyard could be 5 acres or 10 acres or
14 20 acres. So I'm not going to try to -- I don't know.
15 So we'll get you the right answer.

16 CHAIRMAN NELSON: Thank you.

17 Other questions?

18 MR. HOYER: You mentioned that you -- either one
19 farmer or another farmer. I said in this survey that I
20 did there would be 9 miles out away from me, less than a
21 mile, there would be no farms. And you're going through
22 farmland where you go next to, through, or under shelter
23 belts, whatever you do, through the aesthetic lines of
24 tree belts further down the road.

25 You don't need to hit any of them if you're

1 concerned, like you said. And that would be a 9-mile
2 stretch you wouldn't have to talk to anybody as far as
3 their yard is concerned. So this is not true what you're
4 saying.

5 CHAIRMAN NELSON: Other questions or comments?

6 MR. SEAMANS: My name is Paul, P-A-U-L, Seamans,
7 S-E-A-M-A-N-S.

8 This question is for you. You talk about
9 bonding will clean up the spill -- the federal U.S.
10 liability spill trust fund or something. But after it's
11 cleaned up how do you make the farmer or the rancher
12 whole?

13 Suppose you fill my well up with oil and then
14 you clean it out and then I got a well that's no good for
15 drinking anymore? Would your company be willing to pay
16 into a spill trust fund for South Dakotans that will more
17 or less make them whole if there is a spill?

18 Because it could ruin your water, could -- like
19 happened in North Dakota. It could ruin your soil.
20 Would you be willing to pay into a South Dakota spill
21 trust fund?

22 MR. MAHMOUD: Thank you for the question. And
23 we already do.

24 When we transport on this pipe we pay into a
25 fund that's managed by the Federal Government. So it

1 does provide that protection. If we don't step up and we
2 provide for that remediation, it does.

3 I know you're shaking your head, but that's what
4 it was established for.

5 So if we did have a long-term impact to your
6 property, you actually could make a claim to that fund to
7 get compensated for that. They would come back after us.
8 So the government actually -- that's one program that
9 they do actually protect the citizens that we contribute
10 to today. 8 cents per barrel goes into that.

11 As far as if we did have an impact to your
12 property or to anybody's property, we 100 percent are
13 liable for those impacts when it happens or after it
14 happens. If we have residual impacts and if we impacted
15 your water supply, we would provide you an alternate
16 water supply until that water supply was safe or cleaned
17 up for you to consume or utilize again.

18 That's part of the liability that we take or
19 the risk that we take by being an operator of this
20 pipeline.

21 MR. SEAMANS: So you would not pay into a spill
22 trust fund?

23 MR. MAHMOUD: Well, one, there's not one that
24 I'm aware of. And if it's something that was required by
25 law -- and I'm not trying to dodge that, but we have to

1 have certain ways that we conduct our business, and if it
2 was a requirement, we would.

3 And, like I said, we already do pay that 8 cents
4 per barrel fund today for the current pipes that we
5 transport on, and we will for this one.

6 MR. SEAMANS: I have not been aware that this
7 fund would make a rancher or a farmer whole yet. So I'll
8 check into that. It's a new one to me.

9 MR. MAHMOUD: I'll tell you because I live on
10 the Gulf Coast, and when the big spill happened out in
11 the Gulf of Mexico they set up funds and they set up
12 claim centers for people to file claims that the
13 government actually managed and then distributed the
14 funds against those claims.

15 So, I mean, those things do happen. I know you
16 don't have experience up here because there's not as
17 much production. But we've seen that. We weren't part
18 of it, but I see it just like everybody else does in the
19 media, and those are the messages that are portrayed out
20 there.

21 MR. SEAMANS: So you're saying if I were to be
22 made whole again, it would come out of that 8 cents a
23 barrel spill trust fund?

24 MR. MAHMOUD: That's if we don't step up and
25 take care of it ourselves. So that's in the event we do

1 not live up to our obligation. And then the government
2 comes after us. So you as a landowner would not have to.

3 Of course, you could. Nobody's taking away your
4 rights. But that is a mechanism that you're protected by
5 federal programs that exist today.

6 MR. SEAMANS: Thank you.

7 MR. PEDERSEN: Scott, S-C-O-T-T, Pedersen,
8 P-E-D-E-R-S-E-N. And I'm with Lake County.

9 Joey, when was the last spill that you had, and
10 why can't those people be a go-to to find out how you
11 handled the event if you did have an issue so there's
12 some, hey, we did have a problem, because obviously
13 you've had problems, and you can prove to these people
14 that what you're saying is true.

15 Because sometimes, I'm in sales, they don't
16 believe me, but they may believe one of my customers.
17 So is there some examples that you could give of spills
18 that you had and when you were done you had satisfied
19 people?

20 Secondly, when I look at this you talk about
21 13 million dollars per year in taxes. So as a County
22 Commissioner is it fair that I take 274 miles, you divide
23 it into 13 million dollars and say that that's going to
24 allocate about \$47,445 per mile?

25 And, thirdly, how many miles of pipeline can you

1 do a day?

2 MR. MAHMOUD: I can answer all three of those.

3 First of all, we had spills. I would never say
4 that we didn't. Our last spill was in northwest
5 Louisiana. I can't remember the exact amount that was
6 spilled. And that was actually not too long ago.

7 As far as satisfied customers, I couldn't give
8 you these people's names, but if you look at our record,
9 it's all public. All of our safety performance and our
10 operating performance is very public. It's all recorded
11 to the Department of Transportation. They keep those
12 statistics out there.

13 When we have our Emergency Response Plan
14 prepared -- it's not prepared yet. We're not going into
15 operation for a year or more. Actually for two years
16 almost. Those plans will be in place, and they will
17 detail every bit about how we're going to operate.

18 And it's not a secret. We will issue those
19 plans. They're public plans. It's just we don't have
20 them today. So I don't want to tell you something that's
21 not true.

22 But if you look up, you can do a search. One of
23 our affiliates called Sunoco Logistics, who we own,
24 that's where the spill was. It's public data.

25 You need me to speak up?

1 UNIDENTIFIED SPEAKER: Repeat that spill you
2 just said.

3 MR. MAHMOUD: Where our spill was? We own an
4 affiliated company, just like Dakota Access, called
5 Sunoco Logistics, where we had a spill in northwest
6 Louisiana. So, I mean, that's public record. It's out
7 there. You can see how we responded. You can look it
8 up.

9 I'll tell you, if you haven't heard of it, I
10 would be very surprised because we took care of our
11 business and cleaned it up in a professional manner.
12 That's how we operate. We don't dodge the bullet.

13 As these pipelines have operated over the years.
14 Social media has made spills much more apparent to
15 everybody in the United States. And that's probably a
16 good thing. So they are rare. Pipelines are the safest
17 and most efficient means of transportation in this
18 country.

19 If you look at the statistics again by the
20 Department of Transportation, they're the ones that track
21 all of this stuff. It's very clear where the safety --
22 who has the safest record. And it's just pure movement
23 of product over miles of pipe. And statistically
24 there's just nothing better or a better means to
25 transport this.

1 We will build about, per spread -- so we will
2 have somewhere around 11 to 13 spreads on this project.
3 Each one of those construction spreads we'll probably
4 install about a mile a day if we're lucky, depending on
5 weather. So we'll install somewhere between just say
6 10 and 15 miles a day along this pipe. That's across the
7 whole thing.

8 In the State of South Dakota that's probably 2
9 to 4 miles a day, if that answers the second part of your
10 question.

11 Oh, the taxes, how they're allocated. That's a
12 great question and not a very good answer, by the way.
13 So we provide the value of the asset to the state tax
14 office where that value is assessed -- and it's not a
15 total value. It's the value of what's taxable.
16 That's --

17 The taxing authority then levies their tax. We
18 pay it to the State. Our estimate is calculated on the
19 miles of pipe in each county based on the tax rate. We
20 that to the State and then the State distributes that
21 back to the counties or townships. We have no control
22 over that because we pay directly to the State.

23 How it gets back to you, I cannot answer. But
24 that's how we do the tax. And the 13 million dollars is
25 year one taxes. So year one means that's the assessed

1 value. Just like a tractor depreciates over time, this
2 pipeline will depreciate over time. So year one is the
3 most value that it has is 13 million bucks. Year two
4 will be a little bit less, year three a little bit less,
5 so forth and so on as the value of that asset depreciates
6 over time.

7 I hope that answers your questions.

8 MR. SEAMANS: It's my understanding that the
9 construction costs and the assessment valuation are
10 considerably different.

11 MR. MAHMOUD: That's correct.

12 So in South Dakota there's also what's called a
13 contractor's excise tax. So we pay the value of the
14 asset. So we're paying tax on -- say when we bring the
15 pipe in to the State of South Dakota we're paying
16 consumption or sales tax on that asset, the pump station,
17 the materials, et cetera. That's one tax. And that's
18 where the 35 million dollars comes from.

19 Property tax or ad valorem is a second set of
20 taxes.

21 And then third is what's called the contractor's
22 excise tax, which is 2 percent of the value of the
23 contract that we will pay to the contractor. And that's
24 even further broken down based on some criteria. And I
25 can't quote all of those. But that's worth somewhere

1 around 16 million dollars itself that the contractor will
2 pay that we will actually end up paying to the
3 contractor. But that's part of the fee.

4 So there's three levels of taxes in
5 South Dakota.

6 CHAIRMAN NELSON: At this point in deference to
7 the endurance capability of our court reporter, can I see
8 a show of hands?

9 How many more folks want to speak today?

10 We're going to take a short five-minute break,
11 and we're going to reconvene in five minutes.

12 (A short recess is taken)

13 CHAIRMAN NELSON: I'll call the hearing back to
14 order, and we will continue with public comment testimony
15 and questions.

16 Who wants to be next?

17 Maybe all the guys that raised their hands
18 left. Charlie's still here. So I know he's still got a
19 question.

20 Go ahead, sir.

21 MR. LINDSAY: Roy Lindsay, R-O-Y, L-I-N-D-S-A-Y,
22 from Madison.

23 Is there a reason in that that the pipeline
24 isn't going toward the refineries in Montana?

25 MR. MAHMOUD: The refineries that this will

1 serve -- and I'm not familiar with all the refineries in
2 the U.S.

3 Chuck, do you know the ones in Montana?

4 MR. FREY: Yes. I mean, the short answer is
5 because the ones in Montana have adequate supply, and so
6 they do not need any of the crude oil from this
7 pipeline.

8 MR. MAHMOUD: So our target audience or at least
9 our producer's target audience is the Chicago market east
10 towards, say, Ohio and then to the Gulf Coast to where
11 all the other refineries are located.

12 CHAIRMAN NELSON: Next question.

13 MR. JOHNSON: I just have a follow-up question
14 or comment. Charles Johnson from Madison.

15 And I'm holding a copy of this hearing notice
16 here in my left hand. And it says December 15, 2014,
17 Dakota Access, LLC, a Delaware -- not a Texas but a
18 Delaware Limited Liability Company and subsidiary of
19 Energy Transfer Partners, a Delaware Master Limited
20 Liability Company filed with the South Dakota PUC.

21 So I just want to for the record or at least
22 hear for the understanding of the crowd here today who is
23 the permit Applicant for this pipeline? Is it Energy
24 Transfer Partners? Is it Dakota Access, LLC?

25 You mentioned "we," the gentleman over here at

1 the table. I always like to know who's behind "we"?

2 CHAIRMAN NELSON: Mr. Johnson, I'm going to
3 have our Commission Counsel, John Smith, answer that
4 question.

5 MR. SMITH: Yeah. I'm going to -- at least a
6 little bit of introduction, and then maybe Joey can
7 follow up. But if you were to take all of the companies
8 that serve us here in South Dakota, with anything, I
9 don't care what it is, Northwestern Corporation, the
10 electric company, Xcel Energy, almost all of those,
11 they're all Delaware corporations.

12 It's just that Delaware is a state that
13 maintains a corporate system that companies around
14 America and a whole lot of South Dakota companies find to
15 be the best place to incorporate. That's the state of
16 incorporation. That's not your state of location. Okay.

17 It's like -- I mean, I used to work for a
18 Delaware corporation, right. In Sioux Falls for 15 years
19 I did. And even though our headquarters was in Sioux
20 Falls, we were a Delaware corporation. And we did that
21 because of the Delaware corporate statutes and the ease
22 with which Delaware -- the Delaware corporate law system
23 works and the Delaware court system, which has an
24 absolute expertise in corporate law.

25 But that has nothing to do with where a

1 corporation is located or where it does business and
2 that. It's just a technical thing as to that's where you
3 incorporate.

4 The Dakota Access Pipeline is an affiliate and a
5 subsidiary of -- oh, what's the --

6 MR. MAHMOUD: Energy Transfer Partners.

7 MR. SMITH: Energy Transfer Partners. And they
8 are located in Texas but they're incorporated in Delaware
9 and that's an extremely common way companies do business.
10 That's reality. Okay.

11 MR. JOHNSON: I guess what I'm asking for the
12 record, who's the Applicant?

13 MR. SMITH: That's who the Applicant is.

14 CHAIRMAN NELSON: I'm going to interject. The
15 Application, which is obviously online, you can go on and
16 look at it, Dakota Access, LLC is the Applicant.

17 And you can view that on the PUC's website. You
18 can look at the entire Application. That is the
19 Applicant.

20 MR. JOHNSON: So, therefore, Energy Transfer
21 Partners is not on the line liability-wise for this
22 project.

23 Could we assume that?

24 CHAIRMAN NELSON: Once again, that question, I
25 believe, has already been answered. But I'm going to

1 turn it back to the company, and if you care to explain
2 that one more time, go ahead.

3 MR. MAHMOUD: Sure. Thank you.

4 As we stated, the Applicant, as the Commission
5 just stated, is Dakota Access, which is a company of or
6 affiliate of Energy Transfer Partners, which is a JV
7 between Energy Transfer and ConocoPhillips. Our
8 headquarters are in Dallas, Texas. Our business
9 operations, we have offices all over the United States.

10 I can tell you the structure was for a business
11 operating unit, not to defer liability. So the inference
12 of making it sound like we're not on the hook or that
13 we're not liable is just incorrect. We are.

14 MR. JOHNSON: But, sir, are you on the
15 Application?

16 MR. MAHMOUD: We are liable. We maintain our
17 liability. It goes up to the parent company. It goes up
18 to the parent company of Phillips 66 for their share of
19 the project. So there's no perceived cover-up, no
20 perceived nonliability here. It's just a trickle down
21 for the economic tracking of the project. That's it.

22 We are liable. We have everything in place to
23 operate this pipe via our corporate structure, and
24 Energy Transfer as a company is standing behind this
25 project. It's just we're permitting it as the operating

1 entity, which is the Dakota Access Pipeline.

2 MR. JOHNSON: Yes. But Dakota Access is listed
3 as an LLC. They're the only Applicant on this permit.
4 Technically, all liability ends at their gate and door.

5 MR. MAHMOUD: All I can tell you is hire a
6 lawyer and go talk to him about what the LLC structure is
7 to educate yourself.

8 MR. JOHNSON: That's what you're telling a
9 landowner is to hire a lawyer to analyze your business
10 structure?

11 MR. MAHMOUD: Thank you for your comment.

12 MR. JOHNSON: Well, not very good.

13 The other thing I want to see, anecdotal type of
14 situation, but the land agent that was in our area of the
15 county, his spiel was all the permits and all the
16 requirements for this project were already acquired and
17 landowners, you know, should best sign the easement -- or
18 not the easement, but the permission to access the land
19 for surveying.

20 I then asked this young man Aren't you aware of
21 the PUC? He had no idea who the PUC was, who was on it,
22 what it consisted of. Now is that the type of
23 information that a major company coming in here with a
24 pipeline should be telling its own land agents as they
25 interact with landowners?

1 Is that common practice? Is that how we
2 operate? Behind veils of dishonesty?

3 I wasn't going to get too parochial in my
4 comment, but I just want to analyze that in all cases
5 we're not getting the truth out here in the field.

6 Thank you.

7 CHAIRMAN NELSON: Other questions or comments?

8 MR. WELLNITZ: John Wellnitz, up from Beadle
9 County. W-E-L-L-N-I-T-Z.

10 This line, the proposed location crosses a
11 couple of aquifers, one that we irrigate out of. And
12 what is the construction procedure for any potential leak
13 through those areas?

14 MR. MAHMOUD: Well, I'm not familiar with what
15 aquifer you may be referring to. But if it's a deep
16 aquifer, our pipeline depth when we actually excavate and
17 we bury the pipe -- so it will be 4 foot of cover so we
18 may have a foot or so more.

19 So the ditch could be, say, somewhere between
20 4 to 8 foot, depending on where we're at. I don't know
21 if that gets into the aquifer or not that you're
22 referring to. Because there are some shallow surface
23 water areas that are pretty shallow here, and there's
24 also some that are deeper.

25 We usually don't get into what's called and

1 technically referred to as ground water tables. We're a
2 lot shallower in depth than that.

3 If we do encounter a water lens in the soil
4 during construction, we do pump that water out of the
5 ditch, and we pump it through and discharge through some
6 type of sediment filtration bag or dissipating structure
7 to make sure that we are not moving sedimentation off
8 from the ditch line to the ag areas or to off right of
9 way.

10 If we have to, also we do what are called well
11 points where you actually pump the water during
12 construction. You pump that into discharge structures
13 also to control the water level. Then once we're done we
14 essentially let it equalize, backfill, and continue on.

15 MR. WELLNITZ: Okay. So that's the construction
16 phase. What about the pipe as it's -- remains there?

17 Is it double walled or do you have a cement cap
18 around it or is there an impermeable fabric in the
19 bottom of -- what's the continuing protection for the
20 next 50 years?

21 MR. MAHMOUD: Well, the pipe is steel,
22 impermeable by the substance. So the crude oil does not
23 permeate through that steel. So that's your protection.
24 It's 429 nominal wall. That's almost a half inch thick.

25 In aquifer areas, say for buoyancy control, we

1 do put either concrete coated pipe or stack weight in
2 some way to counteract the floating of that pipe up.

3 And if we did have a spill in an area, we would
4 remediate that spill. But the normal operation is it's
5 very unlikely that we would have a spill. The wall
6 thickness of the pipe provides that protection and
7 isolation of the crude between the pipeline and the soil.

8 MR. WELLNITZ: So just the pipe.

9 MR. MAHMOUD: It's just the pipe.

10 MR. WELLNITZ: And your leak detection -- and
11 how quickly can you actually contain and shut down a
12 leak?

13 In Michigan the Kalamazoo River leak, that was
14 Enbridge I think was the company that owns that pipe,
15 and that went for 17 hours before that was actually
16 stopped.

17 MR. MAHMOUD: I don't know all the specifics
18 about that. I know it occurred.

19 Depending on the location where the spill
20 happens, the location of the valves upstream and
21 downstream of that location, that will determine the
22 duration of the isolation of the spill.

23 What I can tell you is -- because that's an
24 impossible question to answer, and a lot of people ask
25 that but it's simply impossible because every inch along

1 the route is different. And in relation to a valve or
2 not to a valve or whatever the atmospheric, environmental
3 soil conditions are, I don't know.

4 However, we have valves that are placed at
5 strategic locations. So, say, if we're, for example, at
6 a major river crossing, the Missouri River. We do have
7 valves on each side to isolate those crossings so in the
8 event we did have a leak that we could quickly isolate
9 that section to mitigate or minimize the amount of the
10 spill.

11 Once we are noticed of a leak, and that's either
12 done by our computational models, observation, any form
13 of identification of a leak from anybody, we
14 automatically respond, shut down the pipe, isolate those
15 points.

16 Typically our systems can communicate within
17 seconds of noticing something's happening. So if we have
18 a pressure loss that triggers an event, that's within
19 seconds. It takes 3 to 5 minutes to close a valve. So
20 it's 3 to 5 minutes times the length of the area between
21 the two valves. That's how much crude could be spilled
22 in your question.

23 MR. WELLNITZ: So what kind of gallonage or
24 barrels are we talking?

25 MR. MAHMOUD: I couldn't tell you that because,

1 like I said, it's different depending on where the
2 location is every time.

3 MR. WELLNITZ: Is the DENR or EPA or somebody --
4 who is determining these things like the permeability of
5 these aquifers, these ground water pollution points?

6 Who is determining that, and how much of that is
7 made public for us to look at?

8 MR. MAHMOUD: I'm going to -- we're going to
9 answer this -- because we actually go through a study
10 that helps determine those factors.

11 So go ahead, Chuck.

12 MR. FREY: There are a number of environmental
13 factors that are looked at to determine what are called
14 high consequence areas where there's special habitat or
15 threatened and endangered species, and that's factored
16 into where you place the valves.

17 Also on our Emergency Response Plan one thing it
18 will do is it will have modeled what is called a
19 worst-case spill. And so we have to provide for the
20 Federal Government what we believe the model of the
21 worst-case spill event could be along this pipeline
22 system.

23 And so, again, that's when the Emergency
24 Response Plan is filed with the government, that
25 information will be in the Emergency Response Plan.

1 MR. MAHMOUD: Yeah. And I'll add there are a
2 couple of agencies. So the Environmental Protection
3 Agency deals with water quality. So they're the ones
4 that actually are monitoring from a federal level what's
5 called the storm water as well as water quality. There
6 are two sections in the Clean Water Act that mandate
7 that.

8 You also have Department of Transportation that
9 is promulgating or having or pass those laws that we have
10 to comply with for the Emergency Response Plan. That's
11 the Department of Transportation.

12 So there's -- and the State agencies. So the
13 DENR here in South Dakota as well as the U.S. Army Corps
14 of Engineers from a wetland and water body standpoint.

15 So there's multiple layers of consideration as
16 well as the PUC Staff make sure that we're compliant with
17 all of those things and get the right permits.

18 MR. WELLNITZ: So all of that analysis has been
19 done prior to your Application? Or at what point in the
20 permitting process is this completed and also made
21 public?

22 MR. MAHMOUD: Okay. Great questions.

23 We have done a lot of the studies. We are
24 continuing to do studies. We've made our applications to
25 the U.S. Army Corps of Engineers for wetland and water

1 body crossings. Those went in in December concurrent
2 with the PUC Application. Those analyses are going on
3 today.

4 The plans that we have for mitigating a spill or
5 emergency response, those are in development now. We are
6 actually meeting with the emergency response
7 organizations along the entire length of the line. Those
8 meetings are occurring as we speak.

9 Once we're done assimilating all of that data,
10 we'll put that plan together, and we'll distribute it.
11 They're public plans. Some of it's not public because it
12 has what's called critical infrastructure in it. But for
13 the most part the emergency response part of that is very
14 public and is filed with the Department of Transportation
15 as well as the State agencies.

16 MR. WELLNITZ: Okay. You had mentioned to
17 Charlie about a lawyer. And in the event of litigation
18 over a spill or something, where is that -- who actually
19 is -- who's paying for the legal aspect of that?

20 If a farmer or landowner has to go up against
21 you as a company and there's some contention about
22 something, is there something in place that -- with the
23 lease agreements or something on that line to pay for the
24 legal fees on both sides?

25 MR. MAHMOUD: Typically not. When we do

1 easement negotiations usually the landowners request that
2 we compensate them for any legal fees that they had up to
3 that point.

4 The recommendation to get a lawyer was simply to
5 understand what an LLC is, not telling you all to go get
6 a lawyer but understand that definition because we
7 weren't making much headway there.

8 As far as future litigation, no. The courts
9 usually determine that. So if there was a suit brought,
10 the courts would decide who pays whose legal fees.
11 That's not a predetermined situation.

12 MR. WELLNITZ: Thank you.

13 MR. MAHMOUD: Thank you.

14 CHAIRMAN NELSON: If I can ask just a follow-up
15 question.

16 You've talked about your SCADA system. You've
17 talked about the valves, remote control. What's the
18 communication link between all of those and your op
19 center?

20 MR. MAHMOUD: That's actually the SCADA system
21 that communicates either via satellite, cellphone,
22 landline. So we typically have at least two of those.
23 If we can get three, we will.

24 So if we can have cell, satellite, plus a
25 landline, we will. That's how we're communicating.

1 Internet connections. Any means possible to communicate
2 wirelessly or wired.

3 CHAIRMAN NELSON: And so you're not putting your
4 own com system or wires or fiber in the trench.

5 MR. MAHMOUD: Well, we may, depending on the
6 utility that's providing the service. So we absolutely
7 put in our own satellite equipment that communicates with
8 services that we subscribe to.

9 CHAIRMAN NELSON: Thank you.

10 Other questions?

11 Paul.

12 MR. SEAMANS: I got kind of a two-part question.
13 I'd kind of like to expound on what this guy was talking
14 about with the Emergency Response Plan.

15 Will that be available to the public?

16 MR. MAHMOUD: The majority of it will be, yes.
17 Because it's handed out to the emergency responders. So
18 there's certain parts that the DOT may redact. I'm not
19 sure. But it will be filed.

20 Monica Howard was helping me out here.

21 There's also a state level report that will be
22 your plan that's also filed that is 100 percent public.
23 So that's mostly just the plan with the redacted
24 sections.

25 MR. SEAMANS: You will not have any -- you will

1 not have any deal with the PUC that says it's
2 confidential? It will be available to the public?

3 MR. MAHMOUD: I don't know what the rules are
4 for the PUC on that.

5 MR. SEAMANS: That's your decision. With the
6 Keystone XL they have a confidentiality agreement. We
7 cannot see the ERP.

8 MR. MAHMOUD: I'm not sure what Keystone does.
9 I don't work for them. But our attorney says they do.
10 They did keep that confidential.

11 We turn ours in to the agencies. You know, we
12 have a state level plan. Not all the information in
13 there is public, though. I will tell you that. There is
14 some that is not.

15 MR. SEAMANS: Okay. Thank you.

16 My third question is on the 13 million dollar
17 property tax, how do you arrive at that? How do you
18 figure that? You explained it. I'm a little slow
19 maybe.

20 MR. MAHMOUD: We take the length of the pipe and
21 each county, each county has a different tax rate. I
22 can't quote what the county rates are, but each county
23 has a different tax rate. We take the linear miles in
24 those counties, the value of the asset in those counties
25 minus labor, and apply that tax rate, and that's how we

1 calculate it.

2 Then we turn that in to the State. The State
3 verifies it, except they come up with their assessed tax.
4 It's going to be somewhere around that number. It's not
5 a hard number, and then they collect that from us and
6 redistribute that back to the communities. And that's
7 about as much as I know.

8 MR. SEAMANS: Okay. That sounds kind of
9 simplified to me because I'm going to go back to the
10 Keystone XL. The centrally assessed pipeline is not only
11 the value of the pipeline, but it's the product -- value
12 of the product that flows through it and the value of the
13 company.

14 Dakota Access, LLC as a company probably does
15 not have much value, and if the pipeline is not running
16 full or it's transporting cheap oil, that is also going
17 to affect the property tax.

18 MR. MAHMOUD: Let me help you out there.
19 There's not a commodity excise tax in South Dakota.
20 That's not part of it.

21 MR. SEAMANS: Maybe I don't understand this, but
22 it's not just the value of the pipeline that determines
23 the property tax. It's also the value of the product
24 that it ships and the value of the company.

25 Am I wrong on that?

1 MR. MAHMOUD: I can just tell you how it's done.
2 Those are not part of the valuation. I'm not a tax
3 expert. I know the basics so that's all I can answer.

4 MR. SEAMANS: One reason I bring this up is one
5 way pipelines get people to be on their side is promising
6 big property taxes. And I think with the Keystone one
7 there might be some people here that are on the Keystone
8 one.

9 I think there was a study done where the
10 counties were only getting about a third of the property
11 taxes that they were promised.

12 MR. MAHMOUD: All I can tell you -- and we've
13 done an economic study, and we know what the dollars are.
14 We've hired tax experts. These are the numbers.

15 How the State distributes that back to the
16 communities is between the State and the communities. We
17 don't actually have anything to do with that.

18 MR. SEAMANS: Other than tell people what
19 they're going to get.

20 MR. MAHMOUD: Well, I'm telling you what the
21 value of the tax is, not how it's distributed, and that's
22 all we can tell you.

23 MR. SEAMANS: I guess I'm telling people here
24 that don't be surprised if you don't get what he promised
25 you.

1 CHAIRMAN NELSON: We've got a question back
2 here, Darren.

3 MR. WALLACE: Phillip Wallace, P-H-I-L-L-I-P
4 W-A-L-L-A-C-E. And I don't really have questions. I
5 have a few comments about the meets.

6 I represent the welders that's going to weld
7 this pipeline together and build the stations that's
8 going to -- I think one station here in South Dakota.
9 And we're the pipeline welders. That's what we do.

10 We don't do anything else. We don't build
11 bridges. We don't build roads. We build pipelines. And
12 Energy Transfer has come in partnership with us for us to
13 do their project. And we'll be installing all the
14 valves. We will be putting the emergency shutdown
15 systems in, and we will be testing them.

16 You know, this is going to be a pipeline that's
17 state of the art. You know, it's -- we have regulations
18 set by DOT, the public utility boards, PHMSA, you know,
19 that we have to make our welds by. You know, these
20 welds -- every weld on this job will be 100 percent
21 x-rayed. You know, if there's any defects at all, they
22 will be removed.

23 And, you know, this country needs this domestic
24 crude. We're sending our dollars to the -- many
25 countries we're getting our crude from, South America,

1 Venezuela, that's where we're getting our oil from. You
2 know, we need to use our oil.

3 This Bakken crude oil is light sweet crude.
4 It's the good stuff. You don't have to dilute it to pump
5 it, you know, like the tar sands out of Canada, you know,
6 where you have to put these dilutants in there to thin it
7 up to pump it. This is the good stuff, and it's domestic
8 crude. It cannot be exported.

9 It's going to our Midwest refineries, eventually
10 through other systems to the Gulf Coast refineries where,
11 you know, there's been a lot of talk of building a
12 refinery right here in South Dakota. And I wish that
13 would happen. But it's been kind of on the back burner
14 for the last couple of years.

15 But, you know, this country needs farmers. You
16 know, they feed us. And I really think that this -- this
17 pipeline will help every American here, you know, in this
18 country to quit relying on this foreign oil and quit
19 moving it by rail.

20 You know, every small town in this whole
21 pipeline corridor where this pipeline is running through
22 is being -- this crude is being moved by rail or by truck
23 and, you know, that's so -- every little small town
24 there's a railroad runs through it. And these -- these
25 75 to 100 railcar freight trains are rambling through

1 there. And, you know, there's been a lot of train
2 wrecks.

3 There's been a lot of deaths related to the
4 crude being shipped by rail. And I think this country
5 needs this pipeline. And I would -- you know, we need
6 the farmers too.

7 You know, there's a lot of talk, you know, we
8 need more windmills generating electricity. You know, I
9 agree with that, but I don't know if there's any farmers
10 in here that's got wind farms on their property but I
11 would think that that would be a very hard thing to farm
12 around. Because every one of those generators has got to
13 have a road that runs to that tower for maintenance.
14 It's -- quite frankly, it's pretty ugly to look at.

15 So when this pipeline is in service it will be
16 out of sight, and you will farm right over the top of it.
17 Even the drain tiles we talked about here, you know, we
18 will install those. And, you know, they will be
19 installed right. And whenever the farmer -- whenever the
20 pipeline's covered, the topsoil's replaced and they're
21 farming, there is settlement, this gas company is
22 responsible for that right-of-way maintenance. They will
23 come back and make it right.

24 So I would like to ask the utility board to
25 grant this permit. Thank you.

1 CHAIRMAN NELSON: Others?

2 Not seeing -- we've got one more here.

3 MR. PEDERSEN: Scott Pedersen. Years in
4 business, miles of pipeline, and number of spills.

5 MR. MAHMOUD: We started, let's see, 2005? Is
6 that right? 2003 we went public.

7 Miles of pipe, we're somewhere just north of
8 71,000.

9 And number of spills I could not tell you. I do
10 not have that data memorized. We can look it up. You
11 can look it up, and you can pull the records and see what
12 it is.

13 Go ahead, Chuck.

14 MR. FREY: Online DOT maintains a database. I
15 think it goes back 20 years of all spills in the U.S.,
16 the company location, et cetera. And so you can check
17 that database. Again, it covers I think the last
18 20 years.

19 MR. PEDERSEN: A follow-up question to that
20 would be that you have a parent company, and then you
21 have those LLCs. So how would I differentiate to know
22 which one of the LLCs fall under your parent company?

23 MR. MAHMOUD: If you search for Energy Transfer,
24 our corporate structure is out there. If you go to the
25 DOT website, it actually will have some of that data

1 prescribed as far as where the link gets back to the
2 various parent companies. That's part of our submittals
3 to them.

4 So I encourage you to look us up. You can go to
5 our website, and it will give you our corporate structure
6 of who all our affiliates are and various companies.

7 We are a big company, like I said earlier,
8 28,000 employees, 71,000 miles of pipe. We have the
9 second largest crude oil storage terminal down on the
10 Gulf Coast. So we have a lot of assets. And we're a big
11 growing company. And we've had a lot of success because
12 we're good at what we do.

13 Thank you.

14 CHAIRMAN NELSON: Anybody else?

15 MR. GILBERTSON: Again, Jay Gilbertson, East
16 Dakota Water Development District. And I guess I'm not
17 sure who this question would be for. Perhaps Mr. Smith.

18 What will be the role of the State DENR in
19 evaluating this project and perhaps issuing permits?

20 MR. SMITH: Those are different things. I mean,
21 we're the permitting entity for the right to build the
22 pipeline. Now does DENR play a role in that? Yes.

23 You've got Brian Walsh sitting right up there.
24 And a number of the witnesses that testify at hearing --
25 and I'm assuming this is going to go to hearing hearing,

1 not the input hearings like this.

2 When we go to a hearing hearing it's like a
3 trial. It really is. And a number of the witnesses, a
4 great many of the witnesses that Staff or -- Commission
5 Staff is a party to the case when we go to hearing. And
6 a large number of their witnesses are, in fact, DENR
7 employees of various divisions within that.

8 Geological Survey, they deal with hydrology.
9 You've got the Division of Environmental Quality. They
10 present evidence on those kinds of issues. And then
11 following that, assuming the permit's issued, one of the
12 things, you know, we talked about the Emergency Response
13 Plan and all of that. A part of that is federal. It's
14 PHMSA, you know. But part of it is the State.

15 We have our own spill prevention statutes that
16 are under the DENR statutes. And I don't read those
17 every day so I'm not as familiar with them as I am with
18 our own stuff.

19 But that absolutely requires the filing of an
20 Emergency Response Plan with DENR here at the state
21 level. And DENR, following the permit issuance, DENR
22 will be one of the major entities that will have a role
23 in anything that may happen following the issuance of the
24 permit, assuming that happens. So they do have a -- they
25 have a significant role in this.

1 I don't know, Brian, do you have anything you
2 want to add? I mean, you've got to get the mic. if
3 you're going to.

4 MR. WALSH: Brian Walsh, W-A-L-S-H, South Dakota
5 Department of Environment and Natural Resources.

6 Mr. Smith was pretty much right on.
7 Permitting-wise we don't have a lot of authority. All
8 the siting authority lies with the PUC.

9 During construction there are permits that any
10 big construction project like a pipeline would need,
11 temporary water rights, a temporary discharge permit,
12 which all get processed through our office.

13 And then, as Mr. Smith said, there's a state law
14 that requires crude oil pipeline operators to submit
15 their Emergency Response Plan to the DENR for evaluation
16 prior to their operation.

17 CHAIRMAN NELSON: Any others?

18 MR. WELLNITZ: John Wellnitz again.

19 Just to clarify, you said the DENR has input
20 after the permit is issued? And for these temporary --

21 MR. SMITH: No. A lot of the witnesses at our
22 hearing -- we are the entity that has the permitting
23 authority, the PUC. But I would say close to all of the
24 witnesses called by the Staff, not quite all -- there's
25 some Department of Revenue and some other people called,

1 but the vast majority of the people who testify for our
2 Staff --

3 Because, see, the Commission operates like a
4 court. So the Commission itself doesn't present
5 evidence. The Staff does. And you've got Darren there,
6 a few people that work for the Staff here today. They
7 prepare the case that is then taken before the Commission
8 on behalf of Staff. And a great many of their witnesses
9 are DENR witnesses.

10 So do they have involvement? The answer is yes.
11 Do they issue the permit prior to? No. That's us.
12 That's what we do.

13 But after that DENR's responsibility is to
14 oversee the emergency response program in the State of
15 South Dakota. And like, you know, Joey over there
16 mentioned, you know, the Federal Super Fund Program and
17 all of that and the inputs into that, we have our own
18 program like that.

19 And, again, I'm not going to make Brian talk
20 about it again. But we have our own similar kind of
21 program to the Super Fund here. And it's meant to
22 provide an emergency backup in case there's a problem
23 with remediation.

24 And I can't remember. The last time I checked
25 the dollar amount in there was -- I can't remember. It

1 was like 4.2 million. But that varies. Because they do
2 have various times they've got to respond. And believe
3 it or not, one of the main sources of responses that
4 happen in this state, they really are, you know what they
5 are? They're truck accidents.

6 They have more incidents related to truck
7 accidents than any other source in the State of South
8 Dakota.

9 And that's the role they play is if the permit's
10 issued, then following that DENR has one of the -- they
11 have one of the main roles in terms of after the fact
12 regulation of what goes on, depending on what goes on.

13 MR. WELLNITZ: Okay.

14 In the event of a ground water contamination,
15 who's responsible to continue drilling and testing?

16 There's a spill in Okoboji, Minnesota. I was
17 reading about it. I think it was in the late '70s. And
18 that plume of oil underground is still moving, and they
19 continue to test it and see where it's going. So there
20 was no way it could be actually dug up.

21 Does that fall on the DENR then or on the EPA,
22 or who takes responsibility for that?

23 CHAIRMAN NELSON: I'm going to have Mr. Walsh
24 answer that. He's shaking his head.

25 MR. WALSH: Brian Walsh, South Dakota Department

1 of Environment and Natural Resources.

2 The person who causes a release in South Dakota
3 is responsible for the cleanup and mitigation of that
4 release until the State relieves them of that
5 responsibility.

6 So in the event that there was a pipeline
7 release that contaminated the ground water, the pipeline
8 would be responsible to monitor that until we told them
9 they could stop. So indefinitely or until there was no
10 longer a risk to human health or the environment.

11 CHAIRMAN NELSON: Any others?

12 If not, ladies and gentlemen, on behalf of the
13 Commission, I greatly appreciate your taking time out of
14 your day to learn more about this.

15 Before we close, I want to see, Commissioner
16 Hanson, do you have any questions?

17 Acting Commissioner Sattgast, any questions?

18 Let me just close by reminding you that we will
19 take comments from anyone right up until the time that we
20 ultimately make a decision one way or another on this
21 particular docket. And you can submit those. You have
22 to do it in writing either by sending a letter or sending
23 an e-mail. And we will add those to the docket file, and
24 then they'll be available to all of the Commissioners and
25 to the public and to the Applicants so everybody knows

1 who's saying what as we go about considering this.

2 With that, again, thank you for taking part in
3 this today. The hearing is adjourned.

4 (The hearing is adjourned at 12:58 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 22nd day of
11 January, 2015, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 20th day of
14 February, 2015.

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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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