

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

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

PREFILED REBUTTAL TESTIMONY
OF
ROBERT P.GOUGH

ON BEHALF OF INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

AUGUST 14, 2015

1, Please state your name and address for the record:

Robert P. Gough, P.O. 25 Rosebud, SD 57570

2. Please state your position and area of responsibility with respect to the Dakota Access pipeline.

I serve as the Secretary of the Intertribal Council On Utility Policy, with responsibilities that include consideration of sustainable development, renewable energy, climate change and weather extremes and variability.

3. Please state your professional qualifications and education:

My professional qualifications and education include the following:

Professional Activities:

Rising Voices of Indigenous Peoples in Global Climate Conversation Co-founder and convener, UCAR/NCAR, Boulder, CO. 2012-15

Contractor/PI, NOAA/NIDIS Tribal engagement, Intertribal COUP, Rosebud, SD. 2012-15

NDPTC Coastal Community Resilience certified; Member PRiMO IKE Hui; Lead Author, Indigenous/Tribal Chapter, National Climate Assessment. 2011-15

Visitor at University Corporation for Atmospheric Research, Boulder, CO 2010-14

Steering Committee, Second Native Peoples, Native Homelands Climate Change Workshop, Shakopee Mdewakanton Sioux Community, MN. 2008-14

COUP Intertribal Wind Plan announced at Clinton Global Initiative. 2010-13

Contractor with Intertribal COUP, on DOE/IWG-EJ Intertribal Wind Demonstration Project and Tribal College straw bale training program. 2004-12

Member, Western Governors Association's Clean and Diversified Energy Advisory Committee, and Wind and Transmission Task Force. 2005-10

Contractor with Wind Powering American Program, NREL, Boulder, CO. 2001-10

Secretary, Intertribal Council On Utility Policy. 1994-15

Tribal Attorney for Cultural & Natural Resources, and Rosebud Sioux Tribe Utility Commission, and private practice. 1994-96

Instructor, Sinte Gleska University. Courses: *Treaties, Law and Government*, and *Environmental Law & Tribal Resource Management*. 1993-95

Consultant for specialized legal research in Tribal economic and resource development for Minnesota and Wisconsin Tribes. Coordinator for the MN Historical Society organizing the Minnesota Historical Society's Indian Advisory Committee. 1989-91

Principal Investigator, Smithsonian Institution research on traditional wild rice practices of the Sokaogon Chippewa in northern Wisconsin. 1988

Consultant on "*Enduring Ways*"- a contemporary Chippewa documentary, Wisconsin Educational Television Network. 1985

Academic Appointments:

University Corporation for Atmospheric Research, Boulder, CO, Visitorship: climate, renewable energy and tribal communities. 2010-15

Massachusetts Institute of Technology, Cambridge, MA, Mel King Green Community Fellow, 2012-3

Natural Resources Law Center, CU-Boulder, CO. El Paso Energy Law Fellow, 2000

University of South Dakota Law School, Vermillion, SD, Indian Law Fellow, teaching and research in telecommunications, utilities and Tribal jurisdictional issues. 1997

Education:

Fordham University, Bronx, NY, Anthropology, BA 1972

Fordham University, Bronx, New York, Sociology, M.A. 1975

University of Wisconsin-Madison, WI, Cultural Anthropology (ecology), M.A. 1977

University of Wisconsin-Madison, WI, Cultural Anthropology, Candidate PhD (ABD) 1979

University of Minnesota Law School, Minneapolis, MN, Juris Doctorate, 1991

4. What is the purpose of your rebuttal testimony?

The purpose of my testimony is to rebut portions of the testimony give with regard to Chapters: 12. Alternatives; 13. Environmental Information; 14. Effects on the Physical Environment; 15. Hyrdology; 16. Effects on Terrestrial Ecosystems; 17. Effects on Aquatic Ecosystems; 18. Land Use; 20 Water Quality; 21. Air Quality; and parts of 23. Community Impact.

5. Have you read the testimony of Ann Curnow and Monica Howard?

Yes, I have read both Ann Curnow and Monica Howard's pre-filed Direct Testimony.

6. Do you agree with this testimony?

No. Their testimony is incomplete given the lack of acknowledgement or inadequate consideration of potential adverse and extreme weather conditions and associated long term changes in weather patterns that are demonstrably changing beyond the historical record and the longer scientifically observable, long-term records, which will likely result from the proper or improper use of this and other such projects.

7. If the answer is no, why not?

It appears that most of the testimony given by these witnesses is strictly confined to those potential impacts likely to occur over the very short period of time during the physical construction of the pipeline. Therefore, their Pre-Filed Direct Testimony did not acknowledge and/or failed to adequately consider the longer term consequences of this project's physical construction over the longer term operation of this single pipeline, or to acknowledge or adequately consider the cumulative impact of the operation of this project along with the 'business as usual' operation of other similar oil pipeline projects, including those built or currently planned to be built in South Dakota, whether such impacts derive from the physical liquid leaks or gaseous emissions from the oils and volatile gases being transported through the pipeline in the course of 'business as usual' with those of other such pipeline projects, or other means of industrial transport; or from the individual or cumulative impact of the functional use of the pipeline project over its industrial lifetime in delivering petroleum products for their ultimate release into the air, lands and waters of the planet through combustion or other means.

Further, neither of the witnesses' direct testimony acknowledge or account for the global scientific consensus of the potential impact from the removal of fossilized carbon molecules from below the planet's surface and their release into the air and water media of the environment, their ability to trap heat within the atmosphere and, thus by energizing both the air and water bodies of the planet, manifest in extreme and adverse weather conditions, events, or patterns, which may in all likelihood then have direct impact upon the air, water, land categories, including those relied upon for agriculture, farming, pasture, recreation and/or the customary use by our state's wildlife resources and the people who live here and depend upon them for their livelihoods and traditional cultures, cultural practices and for the protection and preservation of our cultural and historical resources.

8. Are you familiar with or have you read South Dakota 49-41B-22 regarding the applicant's burden of proof in obtaining a permit to construct an energy facility?

Yes, I have read SDCL 49-41B-22. It provides for the Applicant's burden of proof. The applicant has the burden of proof to establish that:

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

9. Do you believe the proposed facility will comply with all applicable laws and rules?

Beyond the mere promises of compliance, I see nothing in the record or in the direct testimony of any witness that this proposed facility will comply with "all laws and rules" any better, and perhaps worse, than any other pipeline operation which deems a double digit number of leaks within a few years to be safely operation. The law requires that the applicant has the burden of proof to meet the requirements, and not merely promise to establish or to comply during the operation of the project.

10. Do you believe the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area?

I believe that the facility does and will pose a threat of serious injury and disruption to the environment and to the social and economic conditions of the inhabitants and especially to the expected inhabitants in the siting area, along the

siting area and for a great distance beyond the siting area following construction and well on into the future, beyond the functional lifetime of this project.

11 Do you believe the facility will not substantially impair the health, safety or welfare of the inhabitants?

I do believe that this facility can and will substantially impair the health, safety and welfare of the inhabitants of the pipeline area in South Dakota, and well beyond the tracts of land directly associated with the pipeline.

12. Do you believe the facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

I do believe that this facility can and will, over time, unduly interfere with the orderly development of the region. If federally recognized American Indian Tribes, who are the original inhabitants of this region and are federally recognized as sovereign government through both their aboriginal presence and through other rights established through treaty, statute and court decisions.

13. Do you consider federally recognized Tribes to be “local units of government?”

See above answer. They are both aboriginal and federally recognized units of governments with aboriginal and federal rights both over local resources and issues and for such extending beyond their reservation boundaries. They are a creature very different than “local units of governments” as normally considered.

14. Does this conclude your prepared testimony?

Yes.

Dated this 14th Day of August, 2015

A handwritten signature in blue ink, appearing to be 'R. P. Gough', written in a cursive style on a light-colored background.

Robert P. Gough