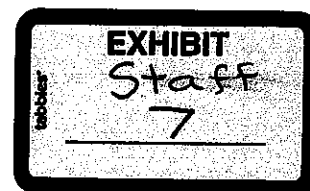


BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET NO. HP14-002

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

**Direct Testimony of Michael Houdyshell
On Behalf of the Staff of the South Dakota Public Utilities Commission
July 6, 2015**



1 **Q: Please state your name and business address.**
2
3 A: My name is Michael Houdyshell. My business address is 445 East Capitol
4 Avenue, Pierre, SD 57501.
5
6 **Q: On whose behalf was the testimony provided?**
7
8 A: This testimony was provided on behalf of the staff of the South Dakota Public
9 Utilities Commission.
10
11 **Q: Describe your educational background.**
12
13 A: I hold a B.S. from Black Hills State University (2003) and a J.D. from the
14 University of South Dakota School of Law (2006).
15
16 **Q: By whom are you now employed?**
17
18 A: I am employed by the South Dakota Department of Revenue as the Director of
19 the Property and Special Taxes Division.
20
21 **Q: What work experience have you had that is relevant to your involvement on
22 this project?**
23
24 A: I have familiarity with how pipelines are assessed for purposes of ad valorem
25 property taxation.
26
27 **Q: What Professional Credentials do you hold?**
28
29 A: I am licensed to practice law in South Dakota.
30
31 **Q: What is the purpose of your testimony?**
32
33 A: The purpose of my testimony is to explain how the Dakota Access Pipeline will
34 be assessed for purposed of property taxation.
35
36 **Q: Have you reviewed the Application and its amendments?**
37
38 A: Yes, I have reviewed the sections relevant to property taxes.
39
40 **Q: Can you please describe the real property taxation system in South
41 Dakota?**
42
43 A: South Dakota has an ad valorem system of property taxation, which means that
44 the tax is imposed on the value of the property, rather than on its quantity or
45 some other measure.
46

- 1 **Q: Can you please describe the central assessment of pipeline property?**
2
- 3 A: Yes. Central assessment means that the property is valued by the Department
4 rather than by the county assessor. Certain industries and public utilities are
5 centrally assessed pursuant to state law. Typically, these are companies that
6 have property in multiple counties or states.
7
- 8 **Q: Does South Dakota have specific laws for the taxation of pipelines?**
9
- 10 A: Yes. SDCL ch. 10-37 contains laws specific to the taxation of pipeline
11 companies. As used in that chapter, the phrase "pipeline companies" includes
12 businesses that transport gasoline, oils or motor fuels via pipeline as a common
13 carrier.
14
- 15 **Q: Does SDCL ch. 10-37 govern the taxation of the Dakota Access Pipeline?**
16
- 17 A: Yes. Dakota Access Pipeline is a pipeline company as defined in SDCL ch. 10-
18 37.
19
- 20 **Q: What are pipeline companies required to report to the Department of
21 Revenue?**
22
- 23 A: Pursuant to SDCL 10-37-3, a pipeline company must submit an annual statement
24 detailing all of the property the pipeline company owns in South Dakota. The
25 annual statement must include pipeline mileage in the state by county, the cost
26 and present value of all buildings owned by the company, and the location and
27 description of all pump stations.
28
- 29 **Q: Can you please provide an overview of how a pipeline is centrally assessed
30 for purposes of taxation?**
31
- 32 A: Yes. Most centrally assessed companies, including pipeline companies, are
33 assessed using the "unit value" method of assessment. There are three steps to
34 the unit value approach. First, the Department determines the fair market value
35 of the whole company as a unit. Then, the Department apportions a share of the
36 total value of the company to South Dakota. Finally, the Department distributes
37 the company's South Dakota value amongst all of the taxing districts where the
38 company owns property in the state.
39
- 40 **Q: How is the "unit value" determined?**
41
- 42 A: SDCL 10-37-9.1 directs the Department to consider the cost approach, market
43 approach, and income approach when valuing pipeline property. When using
44 these approaches, SDCL 10-37-8 allows the Department to take into account
45 everything which will enable the Department to make a just and equitable
46 assessment of pipeline property.

1
2 **Q: Can you please describe the cost, market, and income approaches to**
3 **value?**

4
5 A: Yes. The cost approach determines the estimated cost of replacing a particular
6 property, taking into account the age and condition of the property, and
7 obsolescence. The market approach looks at the price a particular property
8 would bring in an arms-length, open market sale between a willing buyer and
9 willing seller. The income approach capitalizes the income earned from the
10 operation of the property to arrive at an estimate of value.

11
12 **Q: Is equal weight given to all three approaches to value?**

13
14 A: No. Depending on the type of property, one approach may be more reliable than
15 another. For example, the market approach is not particularly reliable for
16 centrally assessed companies, because sales of these types of properties are
17 too infrequent to establish a market value.

18
19 **Q: Once the "unit value" is determined, how is the South Dakota value**
20 **determined?**

21
22 A: After establishing a "unit value," the next step is to allocate a portion of that value
23 to South Dakota. Simply stated, this is done by looking at the percentage of the
24 company's operating assets located in South Dakota as compared to everywhere
25 else. For instance, if 20 percent of a company's operating assets are in South
26 Dakota, 20% of the "unit value" will be allocated and taxed in South Dakota.

27
28 **Q: Once the South Dakota value is determined, how is it distributed to local**
29 **taxing districts?**

30
31 A: A company is required to report the total original cost in each of the taxing
32 districts where the company has property, along with the total original cost in the
33 entire state. The total original cost by taxing district is divided by the total state
34 cost. The resulting percentage is then multiplied by the total state value to
35 determine the value of the company in the taxing district. For example, if a taxing
36 district has 10 percent of the total state cost in that taxing district, then it receives
37 10 percent of the state value. The Department is responsible for informing the
38 county auditor of the company's value in each of the taxing districts within that
39 particular county.

40
41 **Q: Is it possible to estimate the property taxes that will be paid by the Dakota**
42 **Access Pipeline?**

43
44 A: It is extremely difficult to derive reliable estimates of the property tax liability of a
45 nonexistent property such as the Dakota Access Pipeline. Doing so would
46 require the Department to make several assumptions regarding valuation and

1 levy rates in the various taxing districts that would contain pipeline property. The
2 relevant data is unknown to the Department at this time, so making an estimate
3 is unwise and I decline to do so.
4

5 That said, there is generally no downside to adding value to a taxing district in
6 regards to the impact on the property tax system. Typically when significant new
7 value is added to a taxing district, local governments will receive more tax
8 revenue and often other property taxpayers within the taxing district will see
9 lower overall property taxes.
10

11 **Q: Do you agree with the property tax projections stated in the Dakota Access**
12 **Pipeline?**
13

14 **A:** According to Dakota Access's responses to Data Request No. 26 and Dakota
15 Request No. 27, the company is estimating Year 1 property taxes to total \$12.34
16 million statewide. Per the response, "the only measure Dakota Access has to
17 determine an approximate ad valorem tax value is to estimate the actual cost of
18 the pipeline for the first year tax value as there is no operational or company data
19 available to generate the 'value' of the pipeline, company or revenues or losses
20 to determine the value of the company." Further, the response states that
21 "Dakota Access is estimating it will pay approximately \$12.34 million in ad
22 valorem taxes for year 1 based strictly upon the cost of the pipeline and asset in
23 South Dakota."
24

25 The estimate provided by the Dakota Access Pipeline highlights the difficulties in
26 making a reliable estimate of the property tax liability of the pipeline. There
27 simply is not enough data available at this time. The actual cost of the pipeline
28 does not equal the fair market value of the property and likely overstates the year
29 1 value of the pipeline in South Dakota. Again, without the full array of data that
30 Dakota Access readily admits is not available, any estimate made by Dakota
31 Access is speculative at best.
32

33 **Q: Does this conclude your testimony?**
34

35 **A:** Yes.
36

Michael S. Houdyshell

320 North Highland Avenue
Pierre, SD 57501
605.295.3373
mhoudyshell@gmail.com

Experience

South Dakota Department of Revenue, Pierre, SD

Director, Property and Special Taxes Division, October 2011-present

Duties: Provide leadership and guidance to a staff of fourteen tax professionals; Establish priorities and goals for division; Draft, analyze, and lobby proposed legislation and administrative rules; Maintain relationships with state legislators, county officials, and private lobbyists; Analyze and issue opinions on complex tax laws; Oversee the collection of approximately \$100 million of state taxes.

South Dakota Department of Public Safety, Pierre, SD

Staff Attorney, August 2008-October 2011

9-1-1 Coordinator, May 2010-October 2011

Duties: Advise department staff on a variety of legal matters; Monitor grants and agency programs to ensure compliance with federal regulations; Draft, analyze, and lobby proposed legislation and administrative rules; Review contracts and other legal documents; Represent the department in contested case hearings; Advise SD 9-1-1 Coordination Board; Coordinate statewide 9-1-1 services and assist counties/municipalities with 9-1-1 issues.

Smoot & Utzman, P.C., Rapid City, SD

Associate Attorney, August 2006-August 2008

Practice Areas: Family law, Real Estate law, Bankruptcy, Business law

Duties: Draft legal pleadings and documents; Conduct legal research and discovery; Perform client intake and advise clients of their legal rights, obligations, and available remedies; Represent clients in court proceedings; Negotiate settlements and plea agreements.

Education

University of South Dakota Graduate School

Post-baccalaureate certificate in Administrative Studies, November 2010

Governor's Leadership Development Program, Cohort Five

University of South Dakota School of Law

J.D., May 2006

Class Rank: 14/83

Honors and Activities:

- Editor-in-Chief, *Great Plains Natural Resources Journal* Vol. 10
- Teaching Assistant, *Legal Writing/Appellate Advocacy*
- Dean's List, Spring and Fall 2004

Black Hills State University

B.S., Social Sciences, *magna cum laude*, May 2003

References available upon request