

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

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| IN THE MATTER OF THE APPLICATION OF |) | ORDER DENYING MOTION TO |
| DAKOTA ACCESS, LLC FOR AN ENERGY |) | STRIKE AND PRECLUDE |
| FACILITY PERMIT TO CONSTRUCT THE |) | INTRODUCTION OF EXHIBITS |
| DAKOTA ACCESS PIPELINE |) | |
| |) | |
| | | HP14-002 |

On December 15, 2014, the South Dakota Public Utilities Commission (Commission) received an energy facility permit application (Application) from Dakota Access, LLC (Dakota Access) pursuant to SDCL 49-41B-4 to construct the South Dakota portion of the proposed Dakota Access Pipeline (Pipeline). The Pipeline will begin in North Dakota and terminate in Patoka, Illinois, traversing 13 counties in South Dakota. The proposed 12- to 30-inch diameter pipeline will have an initial capacity of 450,000 barrels of oil per day with a total potential of up to 570,000 barrels per day. The proposed route will enter South Dakota in Campbell County at the North Dakota/South Dakota border and will extend in a southeasterly direction, exiting the state at the South Dakota/Iowa border in Lincoln County. The length of the Pipeline through South Dakota is approximately 272.3 miles. The Pipeline also would include one pump station in South Dakota located in Spink County. Pursuant to SDCL 49-41B-24, the Commission has one year from the date of application to render a decision on the Application. Several parties have been granted intervention in this docket.

On January 8, 2015, Commissioner Fiegen filed a letter delivered to Governor Dennis Daugaard advising of a conflict of interest under SDCL 49-1-9 after learning of family ownership of land on the proposed Pipeline route. On January 14, 2015, Governor Daugaard filed a letter with Secretary of State Shantel Krebs appointing State Treasurer Rich Sattgast to serve as Acting Commissioner in place of Commissioner Fiegen pursuant to SDCL 49-1-9.

On August 20, 2015, the Commission issued an Order for and Notice of Evidentiary Hearing. The hearing was set to begin on September 29, 2015.

On September 23, 2015, Rosebud Sioux Tribe filed its exhibit list, which listed 29 exhibits. On September 28, 2015, Dakota Access filed a Motion to Strike Rosebud Sioux Tribe's Exhibit List Filing, and Preclude Introduction of Undisclosed Exhibits (Motion). In support of its Motion, Dakota Access stated that in certain discovery requests to Rosebud Sioux Tribe, Dakota Access had requested documents referenced in, or in support of, all of its answers. Rosebud did not provide any documents. Dakota Access stated that "[i]t is reasonable to assume the exhibits support the Rosebud Sioux Tribe position. However none of the proposed exhibits were produced by the Rosebud Sioux Tribe in discovery." Dakota Access requested that all of Rosebud's Sioux Tribes exhibits, except for Exhibit 28, be stricken from the exhibit list and that Rosebud Sioux Tribe be prohibited from using those exhibits at the hearing. Rosebud Sioux Tribe responded that the Motion was not procedurally proper and that Dakota Access should have sought to enforce discovery through SDCL 15-6-37(a) by seeking an order to compel prior to seeking exclusion. In addition, Rosebud Sioux Tribe stated that Dakota Access should have attempted to confer with Rosebud Sioux Tribe regarding any discovery disputes to

attempt to resolve any disputes pursuant to SDCL 15-6-37(a), prior to seeking to exclude the exhibits.

On September 29, 2015, at the hearing, the Commission considered the Motion. After hearing argument from the parties, the Commission unanimously voted to deny Dakota Access' Motion. The Commission finds that Dakota Access failed to demonstrate why Rosebud Sioux Tribe should be prohibited from attempting to use these particular exhibits at the hearing because of Dakota Access' interrogatory requests and requests for production of documents. It is therefore

ORDERED, that the Motion to Strike Rosebud Sioux Tribe's Exhibit List Filing, and Preclude Introduction of Undisclosed Exhibits is denied.

Dated at Pierre, South Dakota, this 26th day of October, 2015.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: Rayne West

Date: 10-26-15

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Gary Hanson

GARY HANSON, Commissioner

Richard L. Sattgast

RICHARD L. SATTGAST, Acting Commissioner