



in Minnesota, A15-0016 (Minn. App. 2015) slip op. at 8 quoting Minn. Stat. §116D.04 sub 2a (2014).” They argued that “[t]he *Sandpaper [sic] Pipeline Project* case stands for the proposition that the environmental impacts of a major pipeline project, such as DAPL, must be evaluated utilizing the EIS process.” The individual intervenors represented by Glenn Boomsma joined in the motion at the hearing.

Dakota Access opposed the motion. Dakota Access stated that requiring an EIS under state law is permissive and within the discretion of the Commission. Dakota Access pointed out that the Commission has one year to approve or deny the Application and did not know how an EIS could be concluded within this timeframe. Dakota Access also stated that the extensive review that an applicant for a permit undergoes is preferable and allows those involved to examine and test the evidence.

After considering the arguments of the parties, the Commission voted to deny the Motion to Stay the Proceedings (Commissioner Hanson, dissenting). Pursuant to SDCL 34A-9-4, the preparation of an EIS is discretionary with an agency. *In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center*, 2013 S.D. 10, ¶ 20, 826 N.W.2d 649, 655 (citing *In re SDDS, Inc.*, 472 N.W.2d 502, 507 (S.D.1991)). By contrast, the *Sandpaper Pipeline Project* decision involved a case in which an environmental review that complied with the Minnesota Environmental Policy Act was *required to be completed* at some point during the pipeline approval process. *Sandpaper Project Pipeline*, A15-0016, slip op. at 7, (Minn. App. 2015) (emphasis added). Moreover, the Court found that “[t]he sole issue on appeal is when that review must be carried out.” *Id.* Further, the Commission points out the Motion to Stay Proceedings was filed on the same day the contested case hearing was scheduled to begin, which was nine and one-half months into a proceeding that is required to be completed within twelve months. The untimeliness of the Motion to Stay Proceedings would not have allowed the Commission to require an EIS and meet the statutory deadline. In addition, although the Intervenor supporting the motion argued that an EIS would be “the optimal manner for the PUC to exercise its discretion,” there was no showing that the current contested case proceeding is inadequate to address environmental concerns.

It is therefore

ORDERED, that the Motion to Stay Proceedings is denied.

Dated at Pierre, South Dakota, this 22nd 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: Rebecca West

Date: 10-22-15

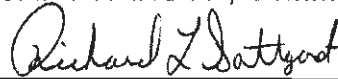
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:



CHRIS NELSON, Chairman

GARY HANSON, Commissioner (dissenting)



RICHARD L. SATTGAST, Acting Commissioner