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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSIONSTATE OF SOUTH DAKOTA)
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COUNTY OF HUGHES)IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUITIN THE MATTER OF PUBLIC UTILITIES
COMMISSION DOCKET NO. HP14-002,
DAKOTA ACCESS PIPELINE LLC

CIV. 16-20

STATEMENT OF ISSUES

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COMES NOW Yankton Sioux Tribe ("Tribe"), by and through Thomasina Real Bird of Fredericks Peebles & Morgan LLP, and hereby submits its Statement of Issues pursuant to South Dakota Codified Laws ("SDCL") 1-26-31.4. The Tribe challenges the Public Utilities Commission's ("PUC") *Final Decision and Order Finding Certification Valid and Accepting Certification; Notice of Entry* ("Final Decision") dated December 14, 2015. The issues the Tribe intends to raise on appeal are as follows:

1. Whether the PUC erred in its *Final Decision*, Findings of Fact, that Dakota Access, LLC members will include Energy Transfer Partners, Phillips 66, and Sunoco Logistics.
2. Whether the PUC erred in its *Final Decision*, Findings of Fact, that the Project will be operated by Sunoco Logistics.
3. Whether the PUC erred in its *Final Decision*, Findings of Fact, that the supply from the Bakken and Three Forks production areas in North Dakota will serve to replace the United States' reliance on less stable and less reliable sources of foreign crude oil and further the goal of energy independence.

4. Whether the PUC erred in its *Final Decision*, Findings of Fact, that Dakota Access has entered into binding contracts for the shipment of crude oil product pursuant to the Project plan and that the contractual commitments, which are already in existence, demonstrate the viability and need for the project.

5. Whether the PUC erred in its *Final Decision*, Findings of Fact, that the transport of domestic crude oil to meet domestic refining needs will reduce the United States' dependence on foreign oil.

6. Whether the PUC erred in its *Final Decision*, Findings of Fact, that Dakota Access will provide a number of opportunities for refiners in the United States to utilize the crude oil production coming out of the Bakken and Three Forks areas in North Dakota and that reliable and safe transportation of crude oil from this production will help meet the energy needs of the United States, including South Dakota.

7. Whether the PUC erred in its *Final Decision*, Findings of Fact, that Dakota Access secured binding long-term transportation and efficiency contracts from multiple committed shippers to support development of the Dakota Access pipeline and that these purported long-term binding shipper commitments demonstrate endorsement and support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity and access to domestic refinery markets.

8. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that the PUC lacks authority to base its decision on whether to grant or deny a permit for a proposed facility on whether the selected route is the route the PUC itself might select.

9. Whether the PUC erred in its *Final Decision*, Findings of Fact, that Dakota Access conducted a thorough cultural resource survey along the proposed Project route, except for areas that Dakota Access has not yet received survey permission.

10. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that neither the Yankton Sioux Tribe nor the Rosebud Sioux Tribe is an affected local unit of government, and that neither reservation is near enough to the Project footprint to be considered an affected local unit of government.

11. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that the environmental assessment conducted in this proceeding satisfactorily addressed environmental impacts and that the preparation of an environmental impact statement pursuant to SDCL chapter 34A-9 is unnecessary.

12. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that the application and its accompanying statements and studies did not contain any deliberate misstatements of material facts.

13. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that the Project, if constructed in accordance with the terms and conditions of the *Final Decision*, will comply with all applicable laws and rules, including all requirements of SDCL chapter 49-41B and chapter ARSD 20:10:22.

14. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that subject to the findings made on the four elements of proof under SDCL 49-41B-22, the PUC has authority to grant, deny, or grant upon reasonable terms, conditions or modifications, a permit for the construction, operation, and maintenance of the Dakota Access Pipeline without requiring compliance with all of SDCL chapter 49-41B.

15. Whether the PUC erred in its *Final Decision*, Findings of Fact and Conclusions of Law, that Dakota Access' permit application, as amended and supplemented through the proceedings in this matter, complies with the applicable requirements of SDCL chapter 49-41B

and ARSD Chapter 20:10:22, and that Dakota Access filed its application generally in the form and content required by SDCL chapter 49-41B and ARSD chapter 20:10:22.

16. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that certain language in SDCL 49-41B-1, “[t]he Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled,” is directed only toward ensuring that the permit process is conducted in a timely manner.

17. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that the Project, if constructed in accordance with the terms and conditions of the *Final Decision*, will not pose an unacceptable threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

18. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that the Project, if constructed in accordance with the terms and conditions of the *Final Decision*, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

19. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that the Project, if constructed in accordance with the terms and conditions of the *Final Decision*, 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.

20. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that Native American Tribes do not have adjudicated private property land rights to any of the property crossed by the Project.

21. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that Dakota Access has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-24.

22. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that it needs no other information to assess the impact of the proposed facility or to determine if Dakota Access has met its burden of proof.

23. Whether the PUC erred in its *Final Decision*, Conclusions of Law, that the Application and all required filings have been filed with the PUC in conformity with South Dakota law and that all procedural requirements under South Dakota law have been met.

Respectfully submitted this 25th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2016, the foregoing **STATEMENT OF ISSUES** was filed with the Office of the Clerk of Hughes County Circuit Court via the Odyssey File and Serve System; and a true and correct copy of the same was served upon the following via first class mail, postage pre-paid:

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