

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)	
APPLICATION OF DAKOTA)	HP14-002
ACCESS, LLC FOR AN ENERGY)	
FACILITY PERMIT TO CONSTRUCT)	APPLICANT’S PROPOSED FINDINGS OF
THE DAKOTA ACCESS PIPELINE)	FACT AND CONCLUSIONS OF LAW
PROJECT)	

PROCEDURAL HISTORY

On December 15, 2014, Dakota Access, LLC (herein “Dakota Access”) filed a siting permit application with the South Dakota Public Utilities Commission (herein “Commission”) pursuant to SDCL 49-41B-2.1(3) for the South Dakota portion of the Dakota Access Pipeline Project (Project). Dakota Access also filed a Motion for a waiver of ARSD 20:10:22:39 which requires all related testimony is filed with the siting permit application.

The Project is a 1,168-mile-long, 12-inch to 30-inch¹ diameter crude oil pipeline. The Project is designed to transport crude oil from the Bakken and Three Forks production areas in North Dakota to existing crude refining facilities in Illinois. The Project is proposed to transport approximately 450,000 barrels per day (bpd) initially, with an anticipated capacity up to approximately 570,000 bpd. The Project originates in the northwest portion of North Dakota and traverses southeast through South Dakota for 270 miles. The Project enters South Dakota in Campbell County approximately 17 miles east of the Missouri River, and continues southeast through McPherson, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, Lake, McCook, Minnehaha, Turner, and Lincoln Counties.

On December 16, 2014 the Commission issued its Notice of Application; Order for and Notice of Public Input hearings; and Notice of Opportunity to Apply for Party Status in this docket. The notice provided that pursuant to SDCL 49-41 B-17 and ARSD 20:10:22:40, each municipality, county, and governmental agency in the area where the facility is proposed to be sited; any non-profit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be sited; or any interested person, may be granted party status in this proceeding by making written application to the Commission on or before February 13, 2015.

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 Project route. On January 14, 2015, Governor Daugaard filed

¹ The South Dakota portion of the pipeline will be 30 inches in diameter.

a letter to 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.

Pursuant to SDCL 49-41 B-15 and 49-41 B-16, and its Notice of Application; Order for and Notice of Public Hearings and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Dakota Access's application at the following times and places:

Wednesday, January 21, 2015, from noon (12:00 p.m. CST) until 3:00 p.m. in the Bowdle School Gymnasium, 3083 2nd Ave., Bowdle, South Dakota;

Wednesday, January 21, 2015, from 6:00 p.m. CST until 9:00 p.m. in the Redfield, School Auditorium, 502 E. 2nd St., Redfield, South Dakota;

Thursday, January 22, 2015, from 10:30 a.m. CST until 1:30 p.m. in the Iroquois School Gymnasium, 111 E. Washita Ave., Iroquois, South Dakota; and

Thursday, January 22, 2015, from 5:30 p.m. CST until 8:30 p.m. in the Roosevelt Room at the Ramkota Hotel & Conference Center, 3200 W. Maple Street, Sioux Falls, South Dakota

The purpose of the public input hearings was to hear public comment regarding Dakota Access' application. At the public input hearings, Dakota Access presented a brief description of the project, following which interested persons appeared and presented their views, comments and questions regarding the application.

At its regularly scheduled meeting of February 13, 2015, the Commission considered and granted the ARSD 20:10:22:30 Waiver Ordering that written testimony be submitted pursuant to a Scheduling Order. In addition, the Commission considered Applications for Party Status received from numerous parties. Additional Applications for Party Status, filed after the February 13, 2015, Commission meeting were heard at the Commission's regularly scheduled March 2, 2015, meeting.

The Commission found, pursuant to ARSD 20:10:22:40, that good cause existed to allow intervention for all Applications for Party Status received and the Commission voted unanimously to grant party status to South Dakota Department of Transportation, Lake County, WEB Water Development Association, Inc., Randy Kuehn, Lincoln County Board of Commissioners, Pente Farms, LLC, Minnehaha County Board of Commissioners, Peggy A. Hoogestraat, Joy A. Hohn, Marilyn J. Murray, City of Hartford, Rocky Acres Land Investment, LLC, Linda Goulet, Dale E. Sorenson Life Estate, Dakota Rural Action (herein "DRA"), Daie and Debra K. Sorenson, Duane Sorenson, Dennis Sorenson, Douglas Sorenson, Haugen Investments, LP, Phillip Fett, Orrin E. Geide, Shirley M. Ollmann, Bradley F. Williams, Craig L. Walker, Datta-Jo A. Walker, Kevin J. Schoffelman, City of Sioux Falls, Delores Andreessen Assid, Charles J. Johnson, Janice El Petterson, Corliss F. Wiebers, Paul A. Nelsen, and Paul A. Seamans. John Wellnitz, John Stratmeyer, Lorin Brass, Indigenous Environmental Network (herein "IEN"), Rosebud Sioux Tribe-Sicangu Oyate Land Office (herein "RST"), Rosebud

Sioux Tribe-Sicangu Lakota Treaty Office (herein “RST”), Yankton Sioux Tribe (herein “YST”), KKKP Property, LLLP, Calvin Schreiber, DLK&M, LLC, Pederson Ag, LLC, Jean Osthus, Daniel & Marcia Hoiland, and Mavis Parry.

Well after the deadline for submitting an Application for Party status, on April 20, 2015 the Commission received an Application from the South Dakota Association for Rural Water Systems, Inc. Dakota Access did not object to the late filed Application, and Party Status was granted to the South Dakota Association for Rural Water Systems, Inc. at the Commission’s regularly scheduled April 30, 2015 meeting.

Thereafter, on March 11, 2015, the Commission entered a Scheduling Order and the parties proceeded accordingly with Discovery. On May 5, 2015, the Yankton Sioux Tribe (YST) filed a Motion to Compel Discovery. The Commission considered the Motion and briefs submitted, as well as arguments at its May 12, 2015, regularly scheduled meeting. The Commission denied the Motion in part and granted the Motion in part.

On May 8, 2015, YST, Rosebud Sioux Tribe (RST), Indigenous Environmental Network (IEN) and Dakota Rural Action (DRA) filed a Joint Motion to Amend the Procedural Schedule. At an ad hoc Commission meeting on May 19, 2015, the Commission considered the Joint Motion briefs submitted, as well as argument. The Commission voted unanimously to amend the procedural schedule as it pertained to the due date for second round discovery requests for parties who issued first round discovery requests and to extend the date for all parties to file pre-filed direct testimony.

In accordance with the original and amended scheduling and procedural orders in this case, Applicant, Commission Staff and certain Intervenor filed pre-filed testimony. The formal evidentiary hearing was held as scheduled to take place on September 29, 30 and October 1, 2, 6, 7, 8 and 9, 2015, in Room 414, State Capitol, Pierre, South Dakota.

On the first day of hearing, September 29, 2015, the YST, RST, IEN and DRA filed a Joint Motion to Stay Proceedings for Preparation of an Environmental Impact Statement. Argument on the Motion was heard on September 29, 2015 prior to the evidentiary hearing. The Motion to stay was denied. The Commission proceeded with the evidentiary hearing as scheduled.

On October 21, 2015, the Commission established the following briefing schedule: (i) initial briefs and proposed findings of fact and conclusions of law from all parties wishing to submit them due by November 6, 2015; and (ii) reply briefs and objections and revisions to proposed findings of fact and conclusions of law due from all parties wishing to submit them on or before November 20, 2015.

On November 6, 2015, along with initial briefs, the Commission Staff and Dakota Access filed Stipulated Proposed Findings of Fact and Conclusions of Law and Permit Conditions. On November 30, 2015, at its regular meeting, the Commission voted unanimously to grant a permit to Dakota Access to construct the Project, subject to conditions.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

PARTIES

1. Petitioner, Dakota Access, LLC, (“Dakota Access”) is a Delaware limited liability company having its principal place of business in Dallas, Texas. As of the hearing dates, the companies with membership in Dakota Access include: Energy Transfer Partners, Phillips 66 and Sunoco Logistics. Tr. at 65-66.

2. At the February 13 and March 2, 2015, regularly scheduled Commission meetings, the Commission unanimously voted to grant party status to all persons that had requested party status prior to the commencement of the meeting. Those that intervened and were granted party status include: South Dakota Department of Transportation, Lake County, WEB Water Development Association, Inc., Randy Kuehn, Lincoln County Board of Commissioners, Pente Farms, LLC, Minnehaha County Board of Commissioners, Peggy A. Hoogestraat, Joy A. Hohn, Marilyn J. Murray, City of Hartford, Rocky Acres Land Investment, LLC, Linda Goulet, Dale E. Sorenson Life Estate, Dakota Rural Action, Daie and Debra K. Sorenson, Duane Sorenson, Dennis Sorenson, Douglas Sorenson, Haugen Investments, LP, Phillip Fett, Orrin E. Geide, Shirley M. Ollmann, Bradley F. Williams, Craig L. Walker, Datta-Jo A. Walker, Kevin J. Schoffelman, City of Sioux Falls, Delores Andreessen Assid, Charles J. Johnson, Janice El Petterson, Corliss F. Wiebers, Paul A. Nelsen, and Paul A. Seamans. John Wellnitz, John Stratmeyer, Lorin Brass, Indigenous Environmental Network, Rosebud Sioux Tribe-Sicangu Oyate Land Office, Rosebud Sioux Tribe-Sicangu Lakota Treaty Office, Yankton Sioux Tribe, KKKP Property, LLLP, Calvin Schreiber, DLK&M, LLC, Pederson Ag, LLC, Jean Osthus, Daniel & Marcia Hoiland, and Mavis Parry. See Commission Orders.

3. The Commission’s Staff also participated in the case as a full party.

PROCEDURAL FINDINGS

4. Dakota Access filed an application for a siting permit with the Commission on December 15, 2015. Ex. DAPL-1.

5. The Commission issued the following notices and orders in the case as described in greater detail in the Procedural History above, which is hereby incorporated by reference in these Findings of Fact and Conclusions of Law:

- 12/16/14 - Notice of Application; Order for and Notice of Public Input Hearings; Notice of Opportunity to Apply for Party Status
- 12/30/14 - Order Assessing Filing Fee

- 2/18/15 - Order Granting Waiver and Intervention and Party Status (South Dakota Department of Transportation, Lake County, WEB Water Development Association, Inc., Randy Kuehn, Lincoln County Board of Commissioners, Pente Farms, LLC, Minnehaha County Board of Commissioners, Peggy A. Hoogestraat, Joy A. Hohn, Marilyn J. Murray, City of Hartford, Rocky Acres Land Investment, LLC, Linda Goulet, Dale E. Sorenson Life Estate, Dakota Rural Action, Dale and Debra K. Sorenson, Duane Sorenson, Dennis Sorenson, Douglas Sorenson, Haugen Investments, LP, Phillip Fett, Orrin E. Geide, Shirley M. Oltmanns, Bradley F. Williams, Craig L. Walker, Dotta-Jo A. Walker, Kevin J. Schoffelman, City of Sioux Falls, Delores Andreessen Assid, Charles J. Johnson, Janice E. Petterson, Corliss F. Wiebers, Paul A. Nelsen, and Paul A. Seamans)
- 2/25/15 - Prehearing Scheduling Conference Order
- 3/05/15 - Order Granting Intervention and Party Status (John Wellnitz, John Stratmeyer, Lorin Brass, Indigenous Environmental Network, Rosebud Sioux Tribe-Sicangu Oyate Land Office, Rosebud Sioux Tribe-Sicangu Lakota Treaty Office, Yankton Sioux Tribe, KKKP Property, LLLP, Calvin Schreiber, DLK&M, LLC, Pederson Ag, LLC, Jean Osthus, Daniel & Marcia Hoiland, and Mavis Parry)
- 3/11/15 - Prehearing Scheduling Order
- 5/04/15 - Order Granting Intervention (South Dakota Association of Rural Water Systems, Inc.)
- 5/07/15 - Order for and Notice of Motion Hearing
- 5/11/15 - Order for and Notice of Motion Hearing
- 5/12/15 - Protective Order
- 5/12/15 - Order for and Notice of Motion Hearing on Less Than Ten Days Notice
- 5/13/15 - Order Granting in Part and Denying in Part Yankton Sioux Tribe's Motion to Compel
- 5/14/15 - Order Granting Motion to Reconsider and Order for and Notice of Motion Hearing on Less Than Ten Days Notice
- 5/20/15 - Order Granting in Part Motion to Amend Procedural Schedule
- 8/18/15 - Order for and Notice of Motion Hearing on Less than 10 Days' Notice
- 8/20/15 - Order for and Notice of Evidentiary Hearing
- 8/21/15 - Order Allowing Late Filed Testimony
- 9/22/15 - Order for and Notice of Motions Hearing on Less Than 10 Days' Notice
- 9/25/15 - Order Granting Motions
- 10/21/15 - Order Setting Post-Hearing Briefing Schedule and Decision Date
- 10/22/15 - Order Denying Motion to Stay Proceedings for Preparation of an Environmental Impact Statement
- 10/26/15 - Order Denying Motion to Strike and Preclude Introduction of Exhibits

6. Pursuant to SDCL 49-41B-15 and 49-41B-16, and its Notice of Application; Order for and Notice of Public Hearings and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Dakota Access's application at the following times and places: Wednesday, January 21, 2015, from noon (12:00 p.m. CST) until 3:00 p.m. in the Bowdle School Gymnasium, 3083 2nd Ave., Bowdle, South Dakota; Wednesday, January 21, 2015, from 6:00 p.m. CST until 9:00 p.m. in the Redfield, School Auditorium, 502 E. 2nd St., Redfield, South Dakota; Thursday, January 22, 2015, from 10:30 a.m. CST until 1:30 p.m. in the Iroquois School Gymnasium, 111 E. Washita Ave., Iroquois, South Dakota; and Thursday, January 22, 2015, from 5:30 p.m. CST until 8:30 p.m. in the Roosevelt Room at the Ramkota Hotel & Conference Center, 3200 W. Maple Street, Sioux Falls, South Dakota.

7. The purpose of the public hearings was to afford an opportunity for interested persons to present their views and comments to the Commission concerning the Application. At the hearings, Dakota Access presented a brief description of the project after which interested persons presented their views, comments and questions regarding the application. See Public Hearing Transcripts.

8. The following testimony was prefiled in advance of the formal evidentiary hearing held September 29, 30 and October 1, 2, 6, 7, 8 and 9, 2015 in Room 414, State Capitol, Pierre, South

Direct Testimony:

- Dakota Access: Joey Mahmoud, Monica Howard, John (Jack) H. Edwards, Chuck Frey, Todd Stamm.
- Commission Staff: Paige Olson, Tom Kirschenmann, Derric Iles, Kim McIntosh, Darren Kearney, Michael Houdyshell, Todd Bailey, David Nickel, Ann Curnow, Andrea Thornton, DeAnn Thyse, Michael Shelly, Robert McFadden, Cameron Young, Ryan Ledin
- Landowner Interveners: Corliss Fay Wiebers, Delores (Andreessen) Assid, Devona B. Smith, Janice Elaine Petterson, Kevin John Schoffelman, Linda Ann Goulet, Margaret (Andreessen) Hilt, Marilyn Jean Murray, Matthew L. Anderson, Mavis Arlene Parry, Nancy J. Stofferahn, Peggy A. Hoogestraat, Rod & Joy Hohn, Ronald H. Stofferahn, Shirley Mae Oltmanns, Thomas E. Stofferahn, Brian Top (Expert witness on behalf of landowners), Ruth E. Arends, Allan C. Arends, Lorrie L. Bacon, and Sherrie K. Fines-Tracy, Orrin Geide, Kent Moeckly, Sue Sibson, Laurie Kunzelman
- City of Sioux Falls
- South Dakota Association of Rural Water Systems

Rebuttal Testimony:

- Dakota Access: Joey Mahmoud, Monica Howard, Chuck Frey, Micah Rorie, Stacey Gerard, Aaron Dejoia
- Commission Staff : Michael E. Timpson
- Landowner Interveners: Peggy A. Hoogestraat, Sue Sibson, Janice Elaine Petterson
- Indigenous Environmental Network and Dakota Rural Action: Lisa Deville, Wasté Win Young, Peter Capossela, Robert P. Gough, Dallas Goldtooth
- Yankton Sioux Tribe: Faith Spotted Eagle, Chris Saunsoci, Jason Cooke

9. Landowner Interveners that filed testimony did not request conditions in the event the siting permit is granted. Rather, they opposed the Project as a whole.

10. Neither the Indigenous Environmental Network nor Dakota Access requested conditions in the event the siting permit is granted. Rather, they opposed the Project as a whole.

11. Neither the Rosebud Sioux Tribe nor the Yankton Sioux Tribe requested conditions in the event the siting permit is granted. Rather, both oppose the Project as a whole

12. The City of Sioux Falls resolved its concerns through negotiations with Dakota Access and did not offer its prefiled testimony as evidence.

APPLICABLE STATUTES AND REGULATIONS

13. The following South Dakota statutes are applicable: SDCL 49-41B-1 through 49-41B-2.1, 49-41B-4, 49-41B-11 through 49-41B-19, 49-41B-21, 49-41B-22, 49-41B-24, 49-41B-26 through 49-41B-38 and applicable provisions of SDCL Chs. 1-26 and 15-6.

14. The following South Dakota administrative rules are applicable: ARSD Chapter 20:10:01 and ARSD 20:10:22:01 through ARSD 20:10:22:25, ARSD 20:10:22:36 through ARSD 20:10:22:40.

15. Pursuant to SDCL 49-41B-22, the Applicant for a facility construction permit 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.

THE PROJECT

16. The Project will be owned by Dakota Access, LLC. Dakota Access, LLC members include Energy Transfer Partners, Phillips 66 and Sunoco Logistics.

17. The Project will be operated by Sunoco Logistics. Tr. at 523.

18. The purpose of the Project is to connect the rapidly expanding Bakken and Three Forks production areas in North Dakota to a crude oil hub in Illinois. This supply will serve to replace the United States' reliance on less stable and less reliable sources of offshore crude oil. Ex. DAPL-1, Section 8.0

19. The Project is approximately 1,168-miles-long. The South Dakota portion of the pipeline will be approximately 270 miles in length. The project enters South Dakota in Campbell County approximately 17 miles east of the Missouri river and continues southeast through McPherson, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, Lake, McCook, Minnehaha, Turner and

Lincoln counties. Detailed route maps are presented in Exhibit A to the Siting Application, admitted into evidence as Ex. DAPL-2.

20. The pipeline is proposed to initially transport approximately 450,000 barrels per day, with an anticipated capacity up to 570,000 barrels per day. Ex. DAPL-1, p. 1.

21. Construction of the Project is proposed to commence in the spring of 2016, with construction in South Dakota to last approximately 9 months. Construction in South Dakota will be constructed in two partial and one full construction spread with 900 to 1,000 construction personnel on each spread. Tr. at 301². Dakota Access has entered into binding contracts for the shipment of crude oil product pursuant to the Project plan. The contractual commitments, which are already in existence, demonstrate the viability and need for the project. Ex. DAPL-1, Section 10.0.

22. The pipeline will have a 12-30 inch diameter and be constructed using high-strength steel pipe API 5L. Ex. DAPL-1, Section 38. The pipeline will be coated with fusion-bonded epoxy which provides a barrier between the steel pipe surface and corrosive environments such as soil or water. The pipeline will also be protected by a cathodic protection system. Id.

23. The pipeline will operate at a maximum operating pressure of 1,440 psig. Ex. DAPL-1, Section 38.3.

24. The Project will have one pump station in South Dakota located approximately 7 miles southeast of Redfield in Spink County at mile post 332.2. The pump station consists of approximately 9 acres of land acquired by Dakota Access in fee. Ex. DAPL-1, Section 38.

25. The pump station will be electrically driven and will pump crude oil through the pipeline. Design and construction of the pump station will meet the requirements of the National Electric Code and American Petroleum Institute (API) 500. The pump station will be fully automated for unmanned operation. Remote start and stop, set point controls, unit monitoring equipment and station information will be installed at the pump station. Backup power at the pump station will consist of batteries to maintain communication between the pump station and the pipeline control center, and operate lighting and power from minor facility procedures if local utility power supply is disrupted. Id.

26. Dakota Access will install 40 main line valves (MLV) in South Dakota. Main line valves have the capacity to isolate sections of the line in the event of an emergency to minimize impacts incase of abnormal operations or for operational maintenance reasons. All valves have remote actuators so that in the unlikely event of an emergency, the valves can be quickly activated from the operational control room to isolate sections of the pipe. Ex. DAPL-1, Section 11 and Tr. at 2141.

27. The use of 40 MLV's is in excess of code requirements and was incorporated into the design of the Project to increase safety and Dakota Access' ability to respond to abnormal

² References to the hearing transcript will be made as, "Tr. at ____."

operating conditions. The use of excessive valves demonstrates Dakota Access' commitment to build a pipeline with state-of-the-art safety features. Id.

28. The pipeline will be constructed within a 125-foot wide corridor, consisting of a 50-foot wide permanent right-of-way with the remaining area consisting of a temporary construction right-of-way. See typical drawings attached to Ex. DAPL-32 and Ex. DAPL-1, Section 11.

29. The project will be designed, constructed, tested and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195. These federal regulations are intended to ensure adequate protection for the public and the environment, and to prevent crude oil pipeline accidents and failures. Ex. DAPL-31.

30. The current estimated cost of the Dakota Access Project in South Dakota is \$820 million. Dakota Access is subject to South Dakota taxing authorities to pay property taxes. Ex. DAPL-1, Section 9.0.

DEMAND FOR THE FACILITY

31. Currently, the U.S produces approximately 10 million barrels of oil per day and imports approximately 10 million barrels per day. Consumption ranges between 17.5 to 20 million barrels per day. Tr. at 1933.

32. The transport of domestic crude oil to meet domestic refining needs will reduce the United State's dependence on foreign offshore oil. Id.

33. Through this project, 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. Reliable and safe transportation of crude oil will help ensure that the United State's energy needs are not subject to unstable political events. Ex. DAPL-1, Sections 8.0 and 10.0.

34. Dakota Access secured binding long-term transportation and efficiency contracts from multiple committed shippers to support development of the Dakota Access pipeline with a crude oil transportation capacity of approximately 450,000 barrels per day. These 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. Id.

ENVIRONMENTAL AND LAND USE IMPACTS OF THE PROJECT

35. Exhibit A to the application for a siting permit includes soil type maps and aerial photograph maps of the Dakota Access Pipeline route in South Dakota that indicate topography, land use, project mile posts and sections, township and range location descriptors. The maps were admitted at hearing as DAPL-2.

36. The Project route crosses six terrestrial vegetation community types in South Dakota including: pasture land/range land, native grassland, hay land, row crop agriculture, residences and farmsteads, and ROW corridors. Total acreage of each type of vegetation community:

- a) Pasture land/range land: 969.3 acres
- b) Native grassland: 41 acres
- c) Hay land: 369.5 acres
- d) Row crop agriculture: 3763.1 acres
- e) Residences and farmsteads: 30 acres
- f) ROW corridors: 128.1 acres

See Table 16.1-1, Ex. DAPL-1

37. Temporary impacts to vegetation and land use along the route will occur as a result of the project. Other than the pump station, land use impacts are generally not permanent. After construction, land uses generally will be the same as they currently exist. Dakota Access has appropriate plans in place to reclaim all vegetation areas temporary impacted by the Project to prevent any permanent impact to vegetation.

38. Surficial deposits within the region wherein the Project is proposed for construction are composed primarily of alluvium, eolian deposits, lacustrine sediments, moraine and outwash. Alluvium consists of clay and silt with lesser amounts of sand and gravel deposited by recent streams, and is typically black or dark brown and rich in organic matter. Ex. DAPL-1, Section 14.3.

39. It is not anticipated the project will impact mineral resources, as no identification of industrial mining operations was noted within one mile of the Project area. Ex. DAPL-1, Section 14.4.

40. Soil tables for the route were provided as Exhibit C to the application, which was admitted at hearing as Exhibit DAPL-4. Exhibit C to the application includes total crossing district of each soil-series unit, the areas impacted by construction of the above-ground pump station, and the characteristics of each of the soil map units within the project area. The identified soil types include: prime farm land, hydric properties, compaction potential, erosion, restrictive soil layers, shallow bedrock and revegetation properties.

41. Approximately 37% of the soils crossed by the pipeline are considered to be prime farmland, and approximately 44% of the route is identified as farmland of statewide importance. Ex. DAPL-1, Section 14.5. Following completion of construction, other than the pump station these areas of farmland will be reclaimed and put back to pre-construction condition and use.

42. The majority of the soils within the project area are classified as hydric. Hydric soils are defined as “soils that formed under conditions of saturation, flooding or ponding long enough during growing seasons to develop anaerobic conditions in the upper part” (US Army Corps of Engineers, 1987). Hydric soils can be prone to compaction and rutting. Dakota Access will minimize impacts to hydric soils by implementing mitigation measures as outlined in the Storm

Water Pollution and Prevention Plan, marked as Exhibit D to the application and admitted in the hearing as Ex. DAPL-5.

43. Soils with high erosion potential within the Project area were identified based on NRCS designations of land capability class and sub-class. Exhibit C to the application, admitted as Ex. DAPL-4, identifies the erosion potentials of each map unit within the project area. While the majority of soils within the project area have low erosion potential, those with high erosion potential are properly identified and Dakota Access will utilize proper erosion and sedimentation control devices as provided for in the storm water pollution and prevention plan, Exhibit D to the application Ex. DAPL-4.

44. Exhibit C to the application identified soils with high sodium concentrations. Identification of such soils is necessary as the condition limits growth of plant species and can be a challenge in reclamation. Ex. DAPL-5. Dakota Access properly identified these areas and retained an agricultural consultant to develop specific mitigation measures for work in these areas. In addition, Dakota Access will consult with NRCS to obtain a proper seed mix for use in these areas.

45. Successful restoration and revegetation of the project work spaces and permanent easement areas are important to maintain positive landowner relations, to maintain land productivity and to protect underlying soil from potential damage.

46. Dakota Access plans for areas of low revegetation potential is properly covered by the the storm water pollution and prevention plan, Exhibit D to the application, Ex. DAPL-5. The majority of soils impacted by the project have moderate to high revegetation potential. Ex. DAPL-1, Section 14.

47. The Dakota Access construction and reclamation process involves placement of environmental inspectors along the route to monitor construction personnel and progress. The effectiveness of revegetation and permanent erosion control devices will be monitored by Dakota Access' operating personnel during long-term operation and maintenance of the Project. Ex. DAPL-1, Section 14.6.

48. Dakota Access developed a proper play for prevention, containment remediation of inadvertent spills or releases of fuel, lubricant, or hazardous materials during construction of the Project. Ex. DAPL-5.

49. High consequence areas, as defined by 29 CFR 195, were not identified in the pipeline corridor. However, if the identification of high consequence areas occurs, or if environmental factors change thus resulting in the existence of a high consequence area, per 49 CFR 195, Dakota Access must integrate that high consequence area into its integrity management plan. Tr. at 2205-2206

Special Considerations: Impact to Water Bodies and Wetlands

50. Dakota Access identified 279 water body crossings located within the Project body footprint. Of those identified, 10 are perennial streams and rivers, 105 are intermittent streams, 139 are ephemeral streams and 25 are open water ponds. Ex. DAPL-1, Section 17.1.
51. Impacts to water bodies will be limited to the construction phase. Impacts during construction may include an increase of sedimentation and turbidity, introduction of water pollutants or entrapment of fish. However, no permanent long-term effects on water quality or fish communities are anticipated to occur as a result of the construction or operation of the pipeline. Ex. DAPL-1, Section 17.1.1.
52. Dakota Access will minimize potential impacts on water bodies by utilizing specialized crossing methods and implementing best management practices to decrease time spent in water crossing areas.
53. Construction methods utilized at water body crossings are highly dependent on characteristics of the water body encountered, environmental constraints, the underlying geology, and other factors. The on-site environmental inspectors will be used to determine the best crossing method based on all environmental factors to reduce potential impacts. Ex. DAPL-1, Section 17.1.1. Potential types of crossing methods include: open-cart crossing method, flume crossing method, dam and pump crossing method, or a horizontal directional drill. Id.
54. The horizontal directional drill crossing method will be utilized at water body crossings or other areas along the route where it is necessary to avoid a particularly sensitive resource. Ex. DAPL-1, Section 17.1.1. The horizontal directional drill method allows for construction across an area without the excavation of a trench, by drilling a hole significantly below conventional pipeline depth, and pulling the pipeline through the pre-drilled hole. Id.
55. Table 17.1-1 (Ex. DAPL-1) of the application identifies the water bodies and wetlands wherein the horizontal directional drill method will be used. In addition, Monica Howard testified to two additional water bodies which will be horizontally drilled. Tr. at 403-403. The HDD method will be used at five water bodies of particular sensitivity and three wetlands of particular sensitivity.
56. Dakota Access routed the project to avoid permanent fill in wetlands. In addition, above ground facilities were sited within upland areas. The result is no permanent loss of wetlands. Ex. DAPL-1, Section 17.2.1. As with water crossings, temporary impacts to wetlands are limited to the construction phase. Table 17.2-1 summarizes all wetlands within the project area. The table includes United States Army Corps of Engineers' jurisdictional wetlands and non-jurisdictional wetlands. To avoid impacts, Dakota Access will cross three of the wetlands via horizontal directional drilling. Where impacts are unavoidable, Dakota Access will implement best management practices to ensure the wetland is restored.
57. Noxious weeds may cause environmental and economic impacts, and can directly or indirectly injure agriculture, waterways, wildlife or public health. A total of 12 species of state and county noxious weeds were documented within the project area. Ex. DAPL-1, Section 16.1. Construction activities result in surface disturbance, which could contribute to the spread of

noxious weeds. Dakota Access will implement best management practices and weed control practices during construction and operation to mitigate an impact from noxious weeds. Dakota Access will also consult with NRCS and the county governments and follow recommendations made by the agencies. Tr. at 1788.

Special Considerations: Impact on Agricultural Land

58. Row crop agriculture and hay lands will be temporarily disturbed and removed from production during construction. Agricultural production will resume during the growing season following completion of the pipeline construction. Dakota Access has appropriate plans in place to restore row crop agriculture and hay lands to pre-construction conditions. Ex. DAPL-5.

59. Dakota Access' restoration of row crop and hay lands to pre-construction conditions will be done pursuant to the Agricultural Impact Mitigation Plan attached to the application as Exhibit D and admitted at the hearing as DAPL-5. In addition, landowners will be compensated for crop loss, short-term reduced yields, and any other damage which results from pipeline construction.

60. To minimize impacts to agricultural vegetation, Dakota Access will segregate topsoil during construction of the pipeline. At a minimum, the depth of topsoil to be stripped will be 12 inches (or actual depth of topsoil if less than 12 inches). However, Dakota Access commits to stripping additional topsoil in areas where the depth of topsoil exceeds 12 inches. Dakota Access will work with individual landowners where topsoil is in excess of 12 inches. Tr. at 1875. Segregated topsoil will then be returned following backfill of the subsoil, ensuring preservation of valuable topsoil within the construction area.

61. Functioning drain tile systems are necessary for landowners to maximize crop production on agricultural land. Dakota Access has taken all available and prudent action to identify drain tiles which exist in the project footprint and will be impacted by the project. Dakota Access has plans in place to repair existing drain tile to its pre-construction condition and maintain the drain tile system's functionality. Tr. at 1878 – 1879, DAPL-5.

IMPACTS ON WILDLIFE AND FISH

62. The Project does not cross any water bodies categorized as high-quality fisheries within South Dakota. A total of three water bodies crossed by the Project are categorized as low-quality and have warm water fishery classifications. The three warm water fishery water bodies are Turtle Creek, James River and Big Sioux River. Ex. DAPL-1, Section 17.1.

63. A comprehensive list of all federal and state sensitive, threatened and endangered species within the counties crossed by the project are listed in Exhibit C to the application, Ex. DAPL- 4. Exhibit C includes habitat assessments and determination of impact or effect on the listed species. Coordination and consultation with U.S. Fish and Wildlife Service and South Dakota Game, Fish & Parks was initiated in 2014, and is continuing. Dakota Access will continue consulting with the resource agencies to develop mitigative measures to minimize potential

impacts to any listed species prior to initiating construction. Dakota Access will implement any recommendations made. Tr. at 2043-2044.

64. Dakota Access and the U.S Fish and Wildlife Service identified potential effects on one listed aquatic species, the Topeka Shiner. Dakota Access will cross water bodies where the Topeka Shiner has been identified as a potentially impacted species. As a result, Dakota Access will utilize the horizontal directional drill crossing method and it will utilize the biological opinion issued by US Fish and Wildlife. As such, US Fish and Wildlife considered that there will be “no impact” on the species.

65. Tom Kirschenmann, the chief of terrestrial resources within the Division of Wildlife for SDGFP concluded that if Dakota Access implements all recommendations made by the U.S. Fish and Wildlife Service, any concern his agency has regarding sensitive areas or species is resolved and satisfied. Tr. at 931 - 940.

IMPACT ON CULTURAL RESOURCES

66. Dakota Access conducted a thorough and complete cultural resource survey along the entirety of the proposed Project route. South Dakota law requires a survey which includes identification of all previously identified cultural resources listed on the Registry of Historic places. However, Dakota Access engaged in a more robust survey. Dakota Access also identified all areas eligible for inclusion on the Registry for National Historic Places. Tr. at 2165.

67. The entirety of the route, with the exception of 12 tracts to which Dakota Access has not received survey permission, has been surveyed for cultural resources. All above-ground facilities for the project have also been surveyed, including the pump station, the valves, the launchers, receivers, as well as all access roads currently identified. As contractor yards and any additional roads are identified, they will also be surveyed. Tr at 2152.

68. Dakota Access developed an unanticipated discovery plan, which was reviewed and approved by Paige Olson of the South Dakota State Historic Preservation Office. TR 2153. The unanticipated discovery plan addresses proper handling of cultural resources, human remains and funerary objects unearthed in the excavation and construction process. Ex. DAPL-9.

69. All areas of particular sensitivity as identified by the Rosebud Sioux Tribe were either avoided in pipeline routing, or avoided through horizontal directional drill methods. Tr. at 2154 – 2165.

DESIGN AND CONSTRUCTION

70. Dakota Access plans to install 40 main-line valves along the route in South Dakota. The valves will have remote actuators, so in the unlikely event of an emergency, the valves can be quickly activated from the pipeline control center to isolate sections of the pipeline to minimize impacts. The valves will also be designed to allow for local operation. Ex. DAPL- 31.

71. Pipeline segments will allow the passage of internal inspection devices, capable of detecting internal and external anomalies in the pipe such as corrosion, dents and gauges. Id.
72. The pipeline will have a design factor of 0.72. Id.
73. The pipeline will have a nominal 30-inch diameter. Id.
74. Pipe material grade will be X-70, and comply with API 5L-PFL2. Pipe wall thickness will be 0.429 inch or 0.625 inch. Id.
75. To protect against corrosion, Dakota Access will apply an external fusion bond epoxy coating to the pipeline and an impressed cathodic protection system will be used. All material will be manufactured, constructed and operated in accordance with applicable regulations. Id., Ex. DAPL-1, Section 38.
76. Current storage of pipeline segments outdoors in preparation for construction does not negatively impact the effectiveness of the fusion bond epoxy coating, nor does it affect pipeline integrity. DAPL-37.
77. Dakota Access has not applied for any waivers from PHMSA.
78. The design of the pipeline is based on a maximum operating pressure of 1,440 PSIG. Various sections of the pipeline will be exposed to lower pressures due to the combined pump station discharge pressure, friction pressure loss and hydrostatic head gain or loss for pipe segments located at elevations that differ from pump station elevations. Ex. DAPL-31.
79. Exhibit B to the application includes a main line valve typical drawing, pump station typical drawing and project flow diagrams. Ex. DAPL-3. Flaws were not identified.
80. Dakota Access is subject to all PHMSA regulations pertaining and inspections to design and construction. Ex. DAPL-31.
81. All pipe welds will be examined around 100% of their circumference using ultrasonic or radiographic inspection. Ex. DAPL 31 and Tr. at 2137.
82. Dakota Access will hydrostatically test the pipeline prior to operations. Hydrostatic testing is done through the use of water to pressurize the pipeline. Ex. DAPL-34.
83. Water used for hydrostatic testing is not consumed but is subsequently released pursuant to applicable permits and will not result in contamination of aquatic ecosystems, since the pipe is cleaned prior to testing and the discharge water is monitored and tested.
84. During construction, Dakota Access will have a number of inspectors on a construction spread, including environmental inspectors who will monitor any environmental issue that arises as well as monitor for compliance with all applicable permits. Ex. DAPL-1, 33.

85. Dakota Access prepared a detailed Storm Water Pollution Prevention Plan, which will be utilized during construction to minimize impacts of storm water runoff during project construction activities. Dakota Access has also developed a spill prevention, containment and countermeasures plan for use during construction to provide preventative and mitigative measures to minimize environmental impact associated with inadvertent spills or releases of fuel, lubricant, or hazardous materials during construction of the project. Finally, the Agricultural Impact Mitigation Plan addresses various aspects of construction intended to mitigate and prevent damage during the construction phase. All three of the plans include the use of experienced environmental and/or agricultural inspectors during the construction phase of the project. Dakota Access thorough implementation of procedures outlined in these plans will minimize the impacts associated with the project. The plans were filed as Exhibit D to the application and introduced into evidence as DAPL- 5.

86. In particular, the Agricultural Impact Mitigation Plan includes many mitigation steps Dakota Access will take during construction which are designed to return the land to its original production. These include topsoil removal and replacement, compaction of the trench line, de-compaction of the work area, and tilling of the topsoil after replacement. Ex. DAPL- 5.

87. Dakota Access is required to acquire permits authorizing the crossing of any county roads and township roads. It's expected the permits will require Dakota Access to restore roads to their pre-construction condition. If its construction equipment causes damage to county or township roads, Dakota Access is responsible for the repair of the roads to pre-construction condition. Pursuant to SDCL 49-41-B-38, Dakota Access is required to post a bond to ensure that any damage beyond normal wear and tear to public roads, highways, bridges or other related facilities will be adequately compensated. Dakota Access and staff agreed the bond amount under SDCL 49-41B-38 for damaged highways, roads, bridges and other related facilities to be set at \$24 million. Tr. at 1925.

88. The Commission finds that procedures in the Storm Water Pollution Prevention Plan, draft Spill Prevention Control and Countermeasures Plan, Agricultural Impact Mitigation Plan, and other construction plans and procedures that Dakota Access has committed to implement, together with conditions regarding construction practices adopted by the Commission herein, will minimize impacts from construction of the Project to the environment and social and economic conditions of inhabitants and expected inhabitants in the project area.

89. Some conditions relate to construction and its affect on landowners and their property. Dakota Access may encounter physical conditions along the route during construction which makes compliance with certain of these conditions infeasible. If, after providing a copy of this order including the conditions, to the landowner and advising commission staff, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearance or right-of-way widths, Dakota Access may follow the alternative procedures and specifications agreed to between it and the landowner.

OPERATIONS AND MAINTENANCE

90. The Dakota Access pipeline will be designed, constructed, tested and operated in

accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (“PHMSA”) regulations at 49 CFR Part 195. These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. Ex. DAPL-31, 34.

91. The safety features of Dakota Access’s operations are also governed by 49 CFR Part 195. Id.

92. The Project will employ a Supervisory Control and Data Acquisition (SCADA) system to remotely monitor and control the pipeline. Data necessary and useful to monitoring the pipeline's operations will be collected and transmitted to the operations control center, which is manned 24 hours per day, 365 days per year.

93. The advanced Supervisory Control and Data Acquisition ("SCADA") systems will be utilized to constantly monitor sensing devices placed along the pipeline to track the pressure, temperature, density, and flow of liquid petroleum under transport, and display each movement's status to operators at the control center. Through these systems, the pipeline's operators can maintain the pipeline within established operating parameters, can remotely shut down pump stations and isolate pipeline segments when they observe abnormal conditions or if safety parameters are exceeded. A subsystem of the SCADA system known as the Computational Pipeline Monitoring system ("CPM"), has the ability to analyze deviations in the flow of liquids to the pipeline, thus improving the operator's ability to identify leaks and other abnormal operating conditions. Id.

94. Additionally, Dakota Access will implement and utilize direct observation methodologies, which include aerial patrols, ground patrols and public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline. Id.

95. Dakota Access will implement abnormal operating procedures when necessary and as required by 49 CFR 195.402(d). Abnormal operating procedures will be part of the written manual for normal operations, maintenance activities, and handling abnormal operating and emergencies. Id., Ex. DAPL-6.

96. As required by US DOT state law and regulations, Dakota Access will prepare a facility response plan for the system. Id. The plan is currently in draft form. In drafting the plan, Dakota Access developed a South Dakota Spill Model Discussion. The Spill Model Discussion evaluates worst-case discharges which permits Dakota Access to properly design its facility response plan to address the same. The risk assessment over-estimates the probable size of a spill to ensure conservatism and emergency response in other planning objectives.

97. The facility response plan will be submitted to PHMSA for review prior to commencement of pipeline operations. The Commission finds that the facility response plan as required under 49 CFR 195.402 should also be submitted to the Commission at the time it is submitted to PHMSA to apprise the Commission of its details.

98. Pursuant to the response plan, Dakota Access will strategically locate emergency response equipment along the pipeline route. The equipment will include trailers, oil spill containment and recovery equipment, boats, and a communication office. Dakota Access will also have a number of contractors available to provide emergency response assistance if necessary. Tr. at 528.

99. If the Dakota Access pipeline should experience a release, Dakota Access would implement its facility response plan. The South Dakota Department of Environment and Natural Resources (“DENR”) would be involved in the assessment and abatement of the release, and require the leak to be cleaned up and remediated. Ex. Staff-3. The DENR has been successful in enforcing remediation laws to ensure the effects of any pipeline releases are mitigated. Id.

100. Local emergency responders may be required to initially secure the scene and ensure the safety of the public, and Dakota Access will provide training in that regard. Tr. at 528.

101. The Commission finds that the threat of serious injury to the environment or inhabitants of the State of South Dakota from a crude oil release is substantially mitigated by the integrity management, leak detection and facility response processes and procedures that Dakota Access is continuing to plan and will implement.

ALTERNATIVE ROUTES

102. The currently proposed route most closely meets the objectives of the Project, while minimizing potential impacts to the environment and maintaining the health and safety of the public. Ex. DAPL-1, Section 12.3.

103. SDCL 49-41B-36 explicitly states that Chapter 49-41B “shall not be construed as a delegation to the Public Utilities Commission of the authority to route a facility.” The Commission accordingly finds and concludes that it lacks authority to compel the Applicant to select an alternative route or to base its decision on whether to grant or deny a permit for a proposed facility and whether the selected route is the route the Commission itself might select.

SOCIOECONOMIC FACTORS

104. SocioEconomic evidence offered by both Dakota Access and Commission staff demonstrates that the welfare of the citizens of South Dakota will not be impacted by the Project. Intervenors did not offer evidence of negative socioeconomic effects.

105. Dakota Access will pay property taxes to local governments on an annual basis estimated to be in the millions of dollars. An increase in assessed, taxable valuation for school districts is a positive development. In addition Dakota Access will pay sales and use taxes.

106. The project will bring jobs, both temporary and permanent, to the State of South Dakota, and specifically to the areas of construction and operation. The project will not substantially impair the health, safety or welfare of the inhabitants.

GENERAL

107. Applicant has provided all information required by ARSD Chapter 20:10:22 and SDCL Chapter 49-41B. S-1.

108. The Commission finds that the Conditions attached hereto as Exhibit A and incorporated herein by reference are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and should be adopted.

109. The Commission finds that a permit to construct the Project should be granted subject to the Conditions set forth in Exhibit A.

110. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

Based on the foregoing Findings of Fact, the Commission hereby makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding pursuant to SDCL Chapter 49-41B and ARSD Chapter 20:10:22. Subject to the findings made on the four elements of proof under SDCL 49-41B-22, the Commission 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.
2. The Dakota Access Pipeline Project is a transmission facility as defined in SDCL 49-41B-2.1(3).
3. Applicant's 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.
4. The project does not involve federal agency action. As a result, the National Environmental Policy Act (NEPA) does not require preparation of an environmental assessment or environmental impact statement.
5. State law does not require preparation of an environmental impact statement. The application and permitting requirements under the South Dakota Siting Act, SDCL 49-41B, requires substantially the same information as a state environmental impact statement per SDCL 34A-9-2 (3). As such, it is redundant and unnecessary for the Commission to require an environmental impact statement outside and in addition to the information contained in the application for a siting permit.
6. The Project, if constructed in accordance with the terms and conditions of this

decision, will comply with all applicable laws and rules, including all requirements of SDCL Chapter 49-41B and ARSD 20:10:22.

7. The Project, if constructed in accordance with the terms and conditions of this 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.
8. The Project, if constructed in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.
9. The Project, if constructed in accordance with the terms and conditions of this 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.
10. Neither the Rosebud Sioux Tribe or the Yankton Sioux Tribe are affected local units of government.
11. Native American Tribes do not have adjudicated private property land rights to any of the property crossed by the Project. The Commission does not have jurisdiction to adjudicate those land rights.
12. Native American Tribes do not have adjudicated water rights to any hydrological resource used by the Project. The Commission does not have jurisdiction to adjudicate those water rights.
13. Dakota Access followed all existing law regarding the survey and identification of cultural resources.
14. The standard of proof is by the preponderance of evidence. The Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-25.
15. The Commission has authority to revoke or suspend any permit granted under the South Dakota Energy Facility Permit Act for failure to comply with the terms and conditions of the permit pursuant to SDCL 49-41B-33 and must approve any transfer of the permit granted by this Order pursuant to SDCL 49-41B-29.
16. To the extent that any of the Findings of Fact in this decision are determined to be conclusions of law or mixed findings of fact and conclusions of law, the same are incorporated herein by this reference as a Conclusion of Law as if set forth in full herein.
17. PHMSA is delegated exclusive authority over the establishment and enforcement of safety-orientated design and operational standards for hazardous materials pipelines. 49 U.S.C. 60101, et seq.

18. SDCL 49-41B-36 explicitly states that SDCL Chapter 49-41B “shall not be construed as a delegation to the Public Utilities Commission of the authority to route a facility.” The Commission accordingly concludes that it lacks authority (i) to compel the Applicant to select an alternative route or (ii) 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 Commission might itself select.

19. The Commission concludes that it needs no other information to assess the impact of the proposed facility or to determine if Applicant or any Intervenor has met its burden of proof.

20. The Commission concludes that the Application and all required filings have been filed with the Commission in conformity with South Dakota law and that all procedural requirements under South Dakota law, including public hearing requirements, have been met or exceeded.

21. The Commission concludes that it possesses the authority under SDCL 49-41B-25 to impose conditions on the construction, operation and maintenance of the Project, that the Conditions set forth in Exhibit A are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and that the Conditions are hereby adopted.

Dated this 6th day of November, 2015.

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