

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)
THE DAKOTA ACCESS PIPELINE)
PROJECT)

REBUTTAL TESTIMONY OF

JOEY MAHMOUD

ON BEHALF OF

DAKOTA ACCESS, LLC

DAKOTA ACCESS EXHIBIT#

August 14, 2015

1 **Q. Please state your name and business address for the record.**

2 A. My name is Joey Mahmoud, I am Vice President of Engineering of Dakota Access, LLC
3 (“Dakota Access”), the Applicant in this proceeding, and Senior Vice President of
4 Engineering of Energy Transfer Partners, L.P. (“ETP”). My business address is 1300
5 Main St, Houston, TX. 77002.

6 **Q. Have you previously submitted direct testimony in this proceeding?**

7 A. Yes, I previously submitted direct testimony, dated July 6, 2015 which is identified as
8 Dakota Access Exhibit 2.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to respond to the testimony of Commission Staff
11 Witness Darren Kearney that recommended the Commission require an indemnity bond
12 of \$24 million for the year in which construction is to commence and a second bond in
13 the amount of \$24 million for the ensuing year.

14 In addition, I will address various concerns expressed by interveners.

15 **Q. Do you believe Staff’s bond recommendation is consistent with past Commission
16 decisions?**

17 A. No.

18 **Q. What is the methodology used by the Commission in past decisions?**

19 A. In the TransCanada in Docket No. HP07-001, the Commission used the proposed bond
20 value identified in the Socioeconomic Assessment of Keystone Pipeline, prepared by
21 Staff Witness John Muehlhausen. Mr. Muehlhausen recommended a \$3 million bond in
22 2008 and \$12 million for 2009. Staff Witness Muehlhausen’s Socioeconomic
23 Assessment of the Keystone Pipeline stated on page 38, “The cumulative bond amount is

24 12 times the estimated cost of repairs/maintenance.”

25 Then, in Docket No. HP09-001, the Commission adopted the same approach in which the
26 Keystone XL indemnity bond was established at \$15,600,000 for each year of
27 construction.

28 Doing the math then, in HP 07-001, the estimated road repairs and maintenance
29 amounted to \$250,000 in 2008 and \$1,000,000 in 2009.

30 For HP 09-001, this equates to \$2,600,000 per calendar year or 1.69% of total
31 construction cost per calendar year.

32 **Q. How do you apply that methodology in this case?**

33 A. In simple terms, 1.69% of Dakota Access construction cost is \$7,024,930 (\$415,676,350
34 x 1.69%). However, we estimate road repairs and maintenance to be approximately 1%
35 of the total construction costs of the project, which is based upon Energy Transfer’s
36 collective project experience over more than 72,000 miles of pipe and thousands of pipes
37 being constructed over the years. For Dakota Access and the construction in South
38 Dakota, the construction cost is estimated to be roughly \$415,676,350 over a one-year
39 construction season. One-percent of this amount is \$4,156,764. Therefore, Dakota
40 Access believes \$4,156,764 is a fair and equitable amount for a road bond and would
41 cover any expenses related to construction.

42 **Q. How does it work if you base the bond on a percentage of total construction cost?**

43 A. Keystone XL (HP09-001), the \$15.6 million bond equated to 1.69% of the estimated
44 capital cost of \$921.4 million on a per construction year basis. Which, based upon
45 Dakota Access’s experience is slightly elevated, but roughly accurate. As mentioned
46 above, 1% of the construction cost of Dakota Access’s construction cost is approximately

47 \$4,156,764 and 1% of the overall capital cost (similar comparison to Keystone XL is
48 [\$820,000,000 X 1%]) \$8,200,000.

49 **Q. Did Dakota Access propose and indemnity bond?**

50 A. Yes, in response to Staff's Completeness Review Data Request No. 32, Dakota Access
51 proposed an indemnity bond totaling \$15,000,000.

52 **Q. Do you feel the proposed \$15,000,000 bond amount is sufficient to insure any**
53 **damage beyond normal wear and tear to public roads, highways, bridges, or other**
54 **related facilities would be adequately compensated?**

55 A. Yes. The \$15,000,000 is roughly 2.6 times more than the equitable value of the road
56 bond as a percentage of construction and 1.8 times more than the capital cost assuming 1
57 percent of construction or at 1.69% of capital cost as utilized on Keystone XL, the
58 \$13,858,000 is 1.08 times more than what was conditioned on Keystone XL. In any
59 comparative metric, Dakota Access's proposal is more than the previous bonds as a
60 percentage basis compared to Keystone XL on a per calendar year.

61 **Q. Are you still proposing the \$15,000,000 bond in light of the above application of**
62 **prior Commission methodology?**

63 A. Yes, even though Dakota Access views the amount as excessive and since we have
64 previously agreed to the amount, we would honor the previously proposed bond amount
65 of \$15,000,000. However, we would accept a lesser amount to be equitable across
66 "similar in concept" projects in South Dakota.

67 **Q. Mr. Mahmoud, have you studied the Keystone conditions imposed by the**
68 **Commission in HP09-001?**

69 A. Yes I have. The Order, which states those conditions, is attached to this testimony
70 marked as Exhibit 1.

71 **Q. Can Dakota Access accept and agree to implement any of those listed conditions on**
72 **this proposed project?**

73 A. Conceptually, in relative comparative terms, yes. However, certain aspects of the
74 conditions would have to be revised to account for project-specific differences, timing of
75 the project and certain submittal deadlines and to account for the fact that Dakota Access
76 is not proposing to construct or operate its pipeline under an alternative methodology or
77 special permit under PHMSA and Dakota Access is a 100% domestic project with no
78 international border crossing or Federal permit or corresponding Federal Environmental
79 Impact Statement. Taking into account those major differences and the site-specific
80 nature of the each project and the applicable conditions, Dakota Access generally agrees
81 to the conditions and specifically we would agree to the following with project-specific
82 adjustments as listed on Keystone XL's Exhibit 1:

83 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, , 26, 27,
84 28, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 43, 45, 46, 47, 48, 49, 50.

85 **Q. What about the other conditions you did not list?**

86 A. The conditions not listed as being acceptable are of such difference to the concepts,
87 designs, and site-specific criteria that Dakota Access does not think even with
88 modifications would those conditions apply. For example, Condition 3 under Keystone
89 XL's Exhibit 1 is specific to the requirements of the Keystone XL Federal requirements
90 since it requires a Presidential Permit from U.S. Department of State for the international
91 border crossing and a resultant federally prepared Environmental Impact Statement and

92 certain consultation requirements as required by the National Environmental Policy Act.
93 Dakota Access simply does not have such a requirement as part of its project as it is a
94 100% domestic project with its origin and termination within the lower 50 states of the
95 United States.

96 Condition 41. This condition is specific to Keystone XL in its entirety and does not
97 apply to Dakota Access.

98 **Q. Which Keystone XL's Exhibit 1 conditions would not apply to Dakota Access in**
99 **their entirety?**

100 A. Conditions 3, Condition 29 and 35.

101 Condition 3 as mentioned above is not applicable as Dakota Access does not require
102 those type of approvals or an Environmental Impact Statement is not being proposed.

103 Condition 29 is not applicable as we will not engage in mainline winter construction.

104 However, if for some reason mainline construction would occur in the winter, Dakota
105 Access agrees to provide a winter construction plan to the Commission no less than 60
106 days prior to conventional construction in the winter.

107 Condition 35 is not applicable as it pertains to a county that is not traversed by the
108 proposed project.

109 **Q. Comment on those Conditions imposed in the Keystone XL project that may need**
110 **some adjustment to apply to the Dakota Access proposed project.**

111 A. In general all of the conditions that pertain to the construction and operation of the
112 pipeline require some level of updating and to make those conditions project specific.

113 Overall, Dakota Access have different methodologies and fall under similar, but different,
114 rules under 49 CFR 195 because Dakota Access is not requesting any exceptions or

115 changes to the standard requirements under 49 CFR 195 whereas Keystone XL have
116 proposed their pipeline under a Special Permit. Therefore, the various plans we filed as
117 Exhibit D to the Application address our techniques and plans. Several staff experts and
118 interveners raised questions regarding various aspects of our plans. Monica Howard and
119 Aaron DeJoia, in their rebuttal, address those concerns. In addition to the project
120 specific modifications required for the overall set of Keystone XL conditions, provided
121 below are Dakota Access's comments to the Keystone XL conditions that with certain
122 specific modifications, are acceptable.

123
124 Condition 2 requires modification to remove the requirements for consultation and
125 adherence to the Presidential Permit, the reference to the PHMSA special permit and any
126 reference to an Environmental Impact Statement.

127
128 Condition 7. Dakota Access agrees to provide a public liaison officer but this person is
129 proposed to be the Dakota Access lead Project Manager for South Dakota and will be
130 back-stopped for times when he cannot be available by the lead right-of-way manager for
131 South Dakota. These individuals are generally available in the state and on the project
132 every day and will have the greatest knowledge of the project during construction and
133 have immediate access to Dakota Access Executive Project Manager and other staff,
134 corporate resources, contractors or any other contact on the project.

135

136 Condition 10. Dakota Access accepts this condition, but since we are within 6 months of
137 construction, the timing should be updated to reflect “Prior to Construction, Dakota
138 Access shall continue its program of contacts and consultation with.....”

139
140 Condition 19. In the event trees are to be removed along the pipeline, Dakota Access has
141 or will pay the landowners for loss of and removal of any trees on their property and will
142 replant any trees in accordance with the land or right-of-way agreement. Additionally,
143 the width of the right-of-way may be greater than 85 feet or 50 feet as contemplated in
144 the Keystone XI condition based upon site-specific needs, landowner and/or right-of-way
145 agreements that allow for larger openings. Any such limitation should be predicated
146 upon the proposed project plan as submitted and not an overall blanket or general
147 statement as it does not accurately reflect the site-specific conditions of the pipeline or
148 project constructability needs or landowner agreements. Also, after construction, no trees
149 will be replanted or allowed to grow within 25 feet of the centerline of the pipeline.

150
151 Condition 23 f. Any road bonds or special conditions should be specific to Dakota
152 Access and as previously mentioned should be a total of \$15,000,000 or less as
153 determined by the Commission based upon the aforementioned data provided.

154
155 Condition 24 g. Dakota Access agrees to the concepts of this condition but suggests that
156 the time to backfill the trench would be 14 days in residential areas. In all instances,
157 Dakota Access will backfill the ditch as soon as practical after installing the pipeline to
158 reduce hazards to the residents or public.

159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181

Condition 25. Dakota Access has provided its construction plan, agriculture crossing plan and erosion and sedimentation plan which all contemplate construction in adverse weather conditions. Therefore, an additional plan is not necessary outside of the information already provided. However, Dakota Access will agree to limit its construction or stop construction in the event weather conditions pose a threat to safety of the construction workforce and/or irreparable damage that cannot be mitigated for with construction or work techniques.

Condition 31. Dakota Access has not or is not requesting a Special permit from PHMSA and therefore this provision is not applicable.

Condition 37. Dakota Access agrees to this condition in concept but suggests that it be changed to and have the word ‘minimum’ added to the width requirements. In most instances and in accordance with the landowner easements, Dakota Access will maintain a 50 foot wide easement (25 foot on each side of the centerline) for operations in a herbaceous state, but in select areas may reduce this to 15 feet or a minimum of a 30 foot maintained corridor in a herbaceous state. However, this is the exception and not the majority.

Condition 38. Similar to Condition 37, Dakota Access agrees to the concept of this condition but suggests that it be changed to and have the word ‘minimum’ added to the width requirements and replace the 10 feet with 15 feet as the minimum clearing width

182 from the centerline of the pipeline. Ten feet, let alone 15 feet, is simply not wide enough
183 to do meaningful and complete leak detection surveys and Dakota Access does not
184 believe this conforms to the monitoring requirements as required by 49CFR195. In most
185 instances and in accordance with the landowner easements, Dakota Access will maintain
186 a 50 foot wide easement (25 foot on each side of the centerline) for operations in a
187 herbaceous state, but in select areas may reduce this to 15 feet or a minimum of a 30 foot
188 maintained corridor in a herbaceous state. However, this is the exception and not the
189 majority. Anything less than the 30 foot wide corridor impacts the ability to do aerial
190 patrol leak detection surveys?

191
192 Condition 40. Dakota Access agrees with a portion of this condition as it relates to the
193 South Dakota water districts, but does not agree with the overly burdensome notice
194 provisions or expansiveness of the condition above and beyond the federal requirements
195 as contemplated under the 49 CFR 195 or any requirements under the Clean Water Act
196 (1972), Oil Pollution Act (1990), Comprehensive Environmental Response,
197 Compensation, and Liability Act of 1980 or the National Pollution Funds Center
198 guidance manual for water quality or spills and remediation (or any other Federal or state
199 legislation that may contemplate spills and clean-up activities). Dakota Access has
200 reached agreement with the water districts traversed by the proposed pipeline to
201 implement voluntary protection mechanisms that will result in relocating the water lines
202 to a depth below the proposed pipeline and to replace the water lines with materials
203 impervious to BTEX up to and extending a minimum to the extent of the permanent
204 easement or more depending upon the water district's guidance (copies can be provided if

205 requested). However, this agreement is limited to the water districts and does not apply
206 to specific landowners or other owners of water systems that may be traversed or as
207 suggested in the Keystone XL conditions. Dakota Access has reviewed the technical
208 documentation pertaining to submersion of water lines in crude oil and although the study
209 results indicated the possibility of permeating into the water or into the pipe, the reality of
210 real world conditions suggests this would not occur and therefore, the science behind the
211 studies is substantially flawed and cannot reasonably be applied to actual real world
212 conditions. Simply put, a spill large enough to saturate the soils surrounding the water
213 pipe would never be allowed to sit for one year without notice, clean-up or remediation.
214 Dakota Access will and agrees to protect any water system and will take immediate
215 measures to protect any water system in the event of a release of any size and would
216 mitigate the exposure to a water line or system. In the event a release did occur and a
217 water line was submerged or impacted, Dakota Access, as part of its restoration and
218 mitigation responsibilities, would ensure that water pipes or any impacts were mitigated
219 so as not to result in any impact to the public, landowners or water system or districts.
220
221 Condition 44. Dakota Access consulted with Museum of Geology at the South Dakota
222 School of Minerals and Technology for paleontological resources and based upon that
223 consultation and review of their data, no areas of concern were identified and therefore
224 Keystone XL condition 44 in its entirety does not apply. However, Dakota Access
225 Unanticipated Discoveries Plan contemplates paleontological resources and the actions
226 Dakota Access would employ if such resources were encountered during construction.

227 Q. **Is it your testimony that the proposed project will meet or exceed all relevant**
228 **federal and state requirements?**

229 A. Yes it is. We have asked for no waivers from PHMSA with respect to the construction
230 and operation of this pipeline. This pipeline meets or exceeds all state and federal
231 requirements for construction and operations.

232 Q. **Will the proposed facility comply with all applicable laws and rules?**

233 A. Yes it will.

234 Q. **Will the facility pose a threat of serious injury to the environment or to the social**
235 **and economic condition of inhabitants or expected inhabitants in the siting area?**

236 A. No. Dakota Access will be a state of the art facility constructed and operated by
237 professionals. Normal operation of the pipeline poses no threat of serious injury to the
238 environment. Our construction techniques, materials utilized, testing plans and
239 operational plans, procedures and continuous monitoring activities are designed and built
240 into the project to avoid, minimize and mitigate any threat from abnormal operations of
241 the pipeline. Our emergency response plans and staging of personnel and equipment to
242 manage and abnormal conditions or other effects of abnormal operations are also
243 designed and incorporated into the project and facilities to substantially mitigate any
244 threat.

245 Q. **Under normal pipeline operations, will agricultural activities be affected?**

246 A. No. We know that construction will have effects, although temporary, on agricultural
247 activities. We have developed construction and agricultural mitigation plans, have hired
248 local and regional experts to design construction techniques and restoration plans to
249 restore agricultural areas to their pre-project conditions and fully expect any impacts to

250 be fully mitigated within a three year period. As such, we have and are paying
251 landowners for three years of crop loss up front and in instances where there is a
252 reduction of yield that has resulted from our pipeline beyond the three year period, we
253 will work with those landowners to restore the production to similar production as
254 compared to undisturbed areas not affected by construction and compensate those
255 landowners until such impacts are fully restored.

256 **Q. Will the facility substantially impair the health, safety or welfare of the inhabitants?**

257 A. No.

258 **Q. Will the facility unduly interfere with the orderly development of the region?**

259 A. No. During the routing of the pipeline, Dakota Access spent considerable time and
260 resources as well as consulting with the various Federal, state, and local governmental
261 bodies and landowners and any other interested parties identifying and avoiding as many
262 stakeholders, development areas, constraints and/or obstacles as possible while still
263 allowing for a route that is constructible and safe. Based upon this routing, Dakota
264 Access believes the route will not interfere with the orderly development of the region
265 and is located along such a route to avoid areas of potential development.

266 **Q. What consideration has been given the views of governing bodies of affected local
267 units of government?**

268 A. We consulted with local governments as much as practicable in all counties and a number
269 of cities along the proposed route, made the recommended adjustments when requested
270 and believe that we have routed the pipeline to account for the best route with the least
271 amount of impacts to the most stakeholders while still allowing for a pipeline route that is
272 constructible and safe and minimizes impacts to the human and natural environmental

273 considerations and resources.

274

275 **Q. Does this conclude your testimony?**

276 A. Yes.

277

278 Dated this 14 day of August, 2015

279

280 _____

281 Joey Mahmoud