

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 ) REPLY TO JOINT MOTION TO AMEND  
THE DAKOTA ACCESS PIPELINE ) PROCEDURAL SCHEDULE  
PROJECT )

**COMES NOW** Dakota Access, LLC, (Dakota Access) by and through its attorneys of record, Brett Koenecke and Kara Semmler of May, Adam, Gerdes & Thompson LLP and respectfully replies to the joint Motion to Amend the Procedural Schedule. This reply is supported by the records, files, and pleadings served in this action.

Dakota Access does not object to procedural schedule adjustments so long as they remain fair to all parties and the Commission's requirement per SDCL 49-41B-24 remains attainable. Dakota Access thinks it is useful to further communicate the following points:

1. Dakota Access filed its application for a siting permit on December 15, 2014. That application, not discovery responses, is the foundation of the docket and the basis from which pre-filed testimony is drafted. That application includes over 60 pages of information to establish that: the proposed facility will comply with all applicable laws and rules; 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; the facility will not substantially impair the health, safety or welfare of the inhabitants; and 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. See SDCL 49-41B-

22. In addition to the application itself, Dakota Access filed: (i) Exhibit A: over 200 pages of maps, (ii) Exhibit B: diagrams and drawings, (iii) Exhibit C: nearly 50 pages of supplemental information, (iv) Exhibit D: over 100 pages of project execution plans.

2. While the discovery process is necessary to further clarify, inquire or learn about the content of the siting application, the moving parties have had since December 15, 2014 to formulate their positions. It appears, based on the nature of the discovery requests to date, that interveners intend to focus on and develop testimony around information which may be outside the scope of SDCL 49-41B. Dakota Access objects to all requests that it accommodate the moving parties' intent to do so.

3. The Rosebud Sioux Tribe (RST) and the Indigenous Environmental Network (IEN) joined in the Motion to Amend the Procedural Schedule and claim the discovery schedule is prejudicial. However, to date, neither RST nor IEN served discovery on Dakota Access. It is hard to see their positions in light of this fact.

4. Mr. Boomsma, on behalf of his 24 clients also asks for an amendment to the procedural schedule. In their Motion, those parties state the need is due to "Dakota Access, LLC's discovery delays." However, only 1 of the 24 clients represented by Mr. Boomsma served discovery on Dakota Access. The other 23 individuals represented by Mr. Boomsma are not affected by the discovery process as they did not serve any discovery.

5. Including subparts, Mr. Boomsma sent 93 individual requests for information to Dakota Access on behalf of 1 of his client. Due to the need for additional research, Dakota Access was unable to timely answer 1 of the interrogatories sent by Mr. Boomsma. All others, aside from 1, were substantively answered on May 2, 2015. After necessary research was conducted, a reply was provided to the 1 missing interrogatory on May 11, 2015.

6. Discovery responses should have been served on Dakota Rural Action (DRA), Yankton Sioux Tribe (YST) and Mr. Boomsma (on behalf of Peggy Hoogestraat) by 5:00 pm on Friday, May 1, 2015. However, on Friday, May 1, 2015 it became apparent to Dakota Access that additional time was necessary to assure accurate responses were submitted. The above listed parties were advised of the concern. Thereafter, initial substantive responses were sent to the listed parties on Saturday, May 2, 2015 at 10:26 am, a little over 17 hours late. The 17 hour delay above does not reflect Dakota Access's inability to meet the procedural schedule established by the Commission. Rather, it reflects Dakota Access's desire to assure accurate discovery responses. Dakota Access does not concede that those extra hours caused any delay or hardship for other parties.

7. Dakota Access understands the discovery schedule set forth in the Procedural Schedule is merely intended to establish guidelines. The Procedural Schedule does not prohibit or limit the parties' right to serve additional discovery. Dakota Access expects to continue discovery, even if served after the guideline date for the "second round." Furthermore, Dakota Access perhaps perceives the usefulness of discovery after receipt of pre-filed testimony quite differently than the moving parties. Pre-filed testimony often generates additional questions. Dakota Access expects to engage in continued discovery if that situation arises. If the moving parties do not find discovery at that stage of the process useful, they are not obligated to participate in it. However, for the sake of an efficient and productive permit hearing, Dakota Access respectfully requests the Commission preserve the opportunity for parties to engage in discovery after the filing of pre-filed testimony.

8. Dakota Access takes issue with Movants' mischaracterization of the discovery process thus far in an apparent attempt to discredit Dakota Access. All allegations that Dakota

Access conducted itself with bad faith or inappropriately in any way, at any point during this proceeding, are simply inaccurate. Dakota Access expects various opinions to come to light in this siting docket. However, Dakota Access also expects to keep the process on point and in keeping with South Dakota law and process.

9. In conclusion, Dakota Access is prepared to meet the schedule as Ordered. Due to the twelve month Commission findings requirement in SDCL 49-41B-24 Dakota Access believes the pre-filed testimony and hearing schedule should remain as scheduled. Meaningful and productive briefing opportunity for all parties, post-hearing, is essential. Any adjustment to the testimony or hearing schedule may compromise that opportunity for the applicant, Commission Staff and interveners. With that said, Dakota Access will consider any proposal made by interveners.

Dated this 18 day of May, 2015.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE  
KARA SEMMLER  
Attorneys for Plaintiff  
503 South Pierre Street  
PO Box 160  
Pierre, SD 57501-0160  
(605) 224-8803