

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)	HP14-002
APPLICATION OF DAKOTA)	
ACCESS, LLC FOR AN ENERGY)	JOINT MOTION REGARDING
FACILITY PERMIT TO)	STIPULATED FINDINGS OF FACT,
CONSTRUCT THE DAKOTA)	CONDITIONS, AND EXHIBITS
ACCESS PIPELINE)	

Come now the City of Sioux Falls (“City”) and Dakota Access, LLC (“Dakota Access”) and jointly seek consideration of Stipulated Findings of Fact Conditions, and Exhibits as follows:

1. The City of Sioux Falls has submitted pre-filed direct testimony in the above referenced siting permit application. The parties have met and considered the issues raised by the City. In light of this discussion and in consideration of the time allotted for hearing and the large number of parties involved, the City and Dakota Access have agreed to file this Joint Motion.

2. This Joint Motion lodges Stipulated Findings of Fact and Conditions as well as Exhibits A and B (attached) and asks that the PUC include them in the record, deem them relevant, and consider them as part of its deliberations without need of foundation or other testimony.

3. Further, the City and Dakota Access ask the PUC to include the Stipulated Findings of Fact and Conditions in the PUC’s Final Decision, if such a permit is granted.

4. Both parties understand that even if the PUC grants this Joint Motion, it would not be bound to issue the requested permit since evidence on

other matters will need to be presented and independently considered by the PUC before arriving at its final decision.

5. If the PUC denies this Joint Motion due to opposition by other parties, or for other reasons, the City reserves its right to call witnesses and engage in cross examination at hearing.

6. If the PUC grants this Joint Motion the City will not object to the siting of the Dakota Access Pipeline (Dakota Access) as presently proposed. Further, if the PUC grants the Joint Motion, the City will defer to the Stipulated Findings of Fact and Conditions and Exhibits and will not present testimony at hearing unless another party opens the door by independently presenting testimony against the City.

7. The City and Dakota Access agree that if the PUC does issue a permit to Dakota Access for its proposed pipeline, the City and Dakota Access will enter into easement(s) consistent with the Stipulated Conditions, provided they reach agreement as to compensation and other easement terms not set forth in the Stipulated Conditions, subject to Sioux Falls City Council approval.

All NB for October
Dated this 29th day of ~~September~~, 2015.

CITY OF SIOUX FALLS

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IN THE MATTER OF THE APPLICATION OF DAKOTA ACCESS, LLC FOR
AN ENERGY FACILITY PERMIT TO CONSTRUCT THE DAKOTA ACCESS
PIPELINE HP14-002

FINDINGS OF FACT

1. The City of Sioux Falls is the owner of real property located in the southeast quarter of (SE ¼) of Section 34-T101N-R51W of the 5th P.M., Minnehaha County, South Dakota. This property is approximately 5 miles west of the Sioux Falls City limits and is outside the City Growth Area. This real property is used for the Sioux Falls Regional Sanitary Landfill (Landfill).
2. The Dakota Access proposed route lies parallel along the west boundary of the Landfill.
3. The Landfill is designed so cells (excavated areas for deposit of solid waste) are set back into Landfill property at least 300 feet. The Landfill uses the area within the 300 feet as a buffer with trees and other vegetation, storage of materials and equipment, and for routine purposes associated with a landfill, including regulatory items such as groundwater monitoring and inspections as required or allowed by the South Dakota Department of Environment and Natural Resources (DENR) or the United States Environmental Protection Agency.
4. The cell design and boundaries have been incorporated into the landfill permit granted by the South Dakota Department of Environment and Natural Resources (DENR). Under the DENR permit, the City is not allowed to excavate land and dispose of waste within the 300' area. Due to the distance between the cells and the proposed pipeline, the excavation and use of the Landfill cells would not disturb the Dakota Access pipeline and the installation of the Dakota Access pipeline would not disturb the Landfill cells.
5. Sioux Falls has installed a system of groundwater monitoring wells to monitor whether municipal solid waste leachate is migrating into the groundwater. This includes an upgradient well on the northwest edge of the landfill site to serve as a baseline for groundwater quality. This monitoring site is located between the Landfill cells and the proposed Dakota Access pipeline. If petroleum or oil (under some unforeseen event) were to migrate into the groundwater in this area, the groundwater monitoring well could show the presence of petroleum. The function of monitoring wells is to detect contaminants and provide for corrective action as soon as possible.

6. Sioux Falls has a Landfill gas pipeline system used for gathering gas generated by the landfill and transporting it off site to an ethanol plant south of the landfill.
7. There are trees and a chain link fence near the west boundary of the Sioux Falls Landfill within the 300 foot area.
8. Sioux Falls does not objection to the siting of the Dakota Access pipeline along the west side of the Landfill, as presently proposed, so long as the Dakota Access pipeline is installed safely at appropriate depths and locations relative to the existing and future Landfill features and fixtures, and does not damage the Landfill property and, further, is constructed and operated in accordance with 49 CFR Part 195 and any other applicable permitting requirements.

CONDITIONS

1. The portion of the Dakota Access pipeline to be installed parallel to the west side of the Landfill, as presently proposed, would be subject to the standard conditions imposed by the PUC (including the conditions set forth in the Mahmoud Rebuttal testimony), except as specifically noted herein, and is also subject to the following conditions.
2. Dakota Access pipeline installation must be undertaken safely at appropriate depths and locations relative to the existing and future Landfill features and fixtures, so neither the installation nor the maintenance permanently damages Landfill property or temporarily damages Landfill property beyond that authorized by the City in easement(s)
3. Dakota Access may not install or maintain its pipeline in such a way as to obstruct or impede Landfill workers or customers from entering and using the Landfill for disposal of solid waste, unless specifically authorized by the City.
4. Dakota Access is responsible for locating and avoiding or protecting the Landfill monitoring well and gas pipeline during construction, including contacting One-Call.
5. Before commencing any construction on the Landfill property, Dakota Access must place barricades so as to protect against damage or intrusion into the immediate area of the Sioux Falls groundwater monitoring well located near the northwest corner of the Landfill. Dakota Access must maintain the barricades throughout construction. If the Landfill monitoring well is damaged by Dakota Access at any time, Dakota Access must pay for any repair or replacement and must cooperate with Sioux

Falls and regulatory authorities regarding any additional sampling and testing of groundwater that may be required in the interim.

6. If petroleum is identified in the Landfill monitoring well in the northwest corner of the Landfill property at any time following installation and the initial use of the pipeline, then Dakota Access must cooperate with Sioux Falls and regulatory authorities regarding additional testing. If the City undertakes further testing to determine the source of the petroleum or oil and the tests show the petroleum or oil is attributable to the Dakota Access pipeline, Dakota Access pipeline will reimburse the City for the testing that the City has undertaken in that regard. If the DENR requires additional groundwater monitoring wells to detect and monitor the extent of Dakota Access's contribution to petroleum at this site, Dakota Access will pay the costs of installing such additional monitoring wells. Further, if petroleum from the Dakota Access pipeline infiltrates the Landfill monitoring well such that the landfill monitoring well malfunctions or can no longer be used to reliably used as part of the Landfill leachate detection system, Dakota access will pay for repair or replacement of the groundwater monitoring well as recommended by the DENR. The City is not obligated to undertake any testing or other regulatory requirements that are properly the responsibility of Dakota Access.
7. Dakota Access and its Contractor(s) must follow all applicable safety regulations during installation and operation of the pipeline.
8. If Dakota Access disturbs any soil or vegetation on the Landfill property, it is responsible for all costs in restoring such areas to pre-disturbance level.
9. Dakota Access shall not, except as otherwise agreed upon by the parties (e.g. item 10 below) park, store, drive on, or use trucks or other construction equipment in any way on the surface above the Landfill gas pipeline and shall not disturb any valves or other appurtenances for the Landfill gas pipeline, expressly authorized by Sioux Falls.
10. Dakota Access may place spoils on the surface of the ground above the Landfill gas pipeline during construction, but must remove the spoils upon installation and completion of the pipeline. Such storage and use of the surface includes driving across and on the surface above the Landfill gas pipeline, but such use is (a) limited to pickups, skid steers, and similar light equipment as the Landfill gas pipeline lies along the west side of the landfill, and (b) as agreed by the Landfill Manager for the area where the DAPL pipeline will cross under the City's Landfill gas pipeline. Dakota Access shall take all necessary precautions when working on top of or crossing the Landfill gas pipeline

11. Although 49 CFR Part 195 requires oil pipelines to be installed at least 30 inches below the surface in areas absent solid rock, Dakota Access has agreed to install its pipeline with the top at least four feet below the surface or as agreed upon in the easement conditions.
12. Dakota Access will cross the City's Landfill gas pipeline on the south side of 268th street near the Landfill. The Dakota Access pipeline must be installed under the Landfill gas pipeline at the proposed intersection with at least two feet of clearance between the Landfill gas pipeline and the Dakota Access pipeline. At this location, Dakota Access is allowed to cross the pipeline with its equipment and will employ necessary protection techniques to avoid impacts to the Landfill gas pipeline, as agreed upon by the Landfill manager.
13. Dakota Access must install its pipeline at sufficient depth (to be determined and agreed upon before construction) from the surface at three agreed upon locations to allow for haul roads/utility corridors to be designed and designated by the City, with the precise locations to be designated by the City prior to the beginning of Dakota Access construction.
14. Dakota Access must pay all costs associated with installing or maintaining the pipeline so as to maintain the clearances between the Dakota Access pipeline and other structures owned or operated by the Landfill or City of Sioux Falls, as required by this Permit.
15. The Dakota Access pipeline must maintain the above stated clearances from the gas pipeline and haul road/utility corridor during the life of this permit, regardless of any alteration, repair, and replacement of the Dakota Access pipeline, or sections thereof, except as expressly authorized by the PUC.
16. Any fences removed by Dakota Access on the Landfill property must be replaced or relocated at Dakota Access's cost.
17. Dakota Access is responsible for the operation, repair, maintenance, replacement, or removal of its oil pipeline and associated appurtenances at no cost to the City of Sioux Falls.
18. The Conditions set forth herein are binding on all officers, agents, employees, assigns, lessees, and successors in interest of Dakota Access.