

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

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**STAFF’S RESPONSE TO MOTION
FOR APPROVAL OF THIRD PARTY
COMPLIANCE MONITOR**

HP14-002

COMES NOW Commission Staff (“Staff”) and files this Response to Motion for Approval of Third Party Compliance Monitor (“Motion”) filed by Dakota Access, LLC (“Dakota Access” or “Applicant”). Staff has reviewed the Motion and offers the following as a response to Applicant’s selection of Ryan Coleman as the third party compliance monitor (“Monitor”).

The Public Utilities Commission (“Commission”) has never mandated a third party compliance monitor as a condition of a permit in the past. Thus, no precedent exists in previous dockets.

Staff has read and considered the Motion and attached documents, as well as comments filed in the docket. While Staff does understand the concerns of landowners regarding Mr. Coleman’s long history in the industry, Staff notes that it is imperative that the Monitor have ample experience within the industry and specializing in the environmental field in order to best fulfill the requirements of his position.

It is noteworthy that Mr. Coleman has apparently worked on nearly fifty projects, only one of which appears to be connected to Energy Transfer. While page six of Applicant’s Exhibit B does reference an Energy Transfer Company project, specifically the Tiger and Fayetteville Express natural gas pipelines, a complete reading of Mr. Coleman’s resume shows that he was

not an employee of Energy Transfer at that or any other time. The Tiger and Fayetteville Express Pipelines both went into service in December of 2010.¹ See *ETC Tiger Pipeline, LLC*, Order Issuing Certificates, 131 FERC ¶ 61, 010. From December 2006 to September 2010, Mr. Coleman was employed by Providence Engineering and Environmental Group, LLC, according to Exhibit B. Therefore, it can be inferred that, at no time was Mr. Coleman directly employed by or responsible to Energy Transfer. Staff further notes that other potential third party monitors would likely be environmental consulting firms that have worked on pipeline projects for industry in the past, since such firms market their expertise to both project developers and regulators. Thus, Staff is comfortable with Mr. Coleman's ability to remain independent in his job performance.

Furthermore, Mr. Coleman has an extensive range of experience in the field. The nearly fifty projects listed in Exhibit B include both land and wetlands crossings, projected dealing with endangered species and animal habitat.

Staff notes that, pursuant Condition 31, the Applicant's filing shall include a description of how Dakota Access proposes for the selected individual to monitor compliance. This description does not appear to have been included in the Applicant's filing. This information is essential to the determination of whether the Applicant's proffered Third Party Compliance Monitor will fulfill the required obligations.

It is Staff's understanding that construction will take place not section by section, but there will essentially be continuous work ongoing throughout each spread. As such, it is Staff's opinion that the Monitor should have sufficient personnel and resources to monitor construction


¹ <http://www.reuters.com/article/pipelines-operations-energytransfer-idUKN2221350320101122>

activities for all stages of construction along each construction spread. Per Condition 31, Dakota Access must file a plan developed jointly with the Monitor. Dakota Access should address this concern in the plan.

CONCLUSION

In conclusion, Staff generally supports the Motion, but reserved its recommendation pending a filing by the Applicant providing a description of how Dakota Access proposes for the selected individual to monitor compliance. A specific concern of Staff is how the Monitor will monitor compliance on more than one spread if Dakota Access does intend for construction to take place on more than one spread simultaneously.

Dated this 9th day of March, 2016.



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