

BEFORE THE
PUBLIC UTILITIES COMMISSION
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

SD PUC DOCKET HP14-002

PREFILED TESTIMONY OF DARREN KEARNEY
ON BEHALF OF THE COMMISSION STAFF
July 6, 2015

1 **Q. State your name.**

2 A. Darren Kearney.

3 **Q. State your employer and business address.**

4 A. South Dakota Public Utilities Commission, 500 E Capitol Ave, Pierre, SD, 57501.

5 **Q. State your position with the South Dakota Public Utilities Commission.**

6 A. I am a Staff Analyst, which is also often referred to as a Utility Analyst.

7 **Q. What is your educational background?**

8 A. I hold a Bachelor's of Science degree, majoring in Biology, from the University of
9 Minnesota. I also hold a Masters of Business Administration degree from the University
10 of South Dakota.

11 **Q. Please provide a brief explanation of your work experience.**

12 A. I began my career in the utility industry working as contract biologist for Xcel
13 Energy, where I conducted biological studies around various power plants, performed
14 statistical analysis on the data collected, and authored reports in order to meet National
15 Pollutant Discharge Elimination System (NPDES) permit requirements.

16 After two years of performing biological studies, I then transitioned into an
17 environmental compliance function at Xcel Energy as a full time employee of the
18 company and became responsible for ensuring Xcel's facilities maintained compliance
19 with the Oil Pollution Act of 1990. This involved writing Spill Prevention Control and
20 Countermeasure (SPCC) plans and also ensuring Xcel facilities maintained compliance
21 with those plans. During this time I was also responsible for the company's
22 Environmental Incident Response Program, which involved training Xcel employees on
23 spill reporting and response, managing spill cleanups, and mobilizing in-house and

1 contract spill response resources. I was also responsible for aboveground storage tank
2 permitting during this time.

3 I was in that role for approximately three years and then I transitioned to a coal-
4 fired power plant at Xcel and became responsible for environmental permitting and
5 compliance for the plant. Briefly, my responsibilities involved ensuring that the facility
6 complied with all environmental permits at the plant, which included a Clean Air Act Title
7 V Air Permit, a Clean Water Act NPDES permit, and a hazardous waste permit. I also
8 submitted reports on the plant's operations to various agencies as required by permit or
9 law. After three years at the power plant, I left Xcel Energy to work for the South
10 Dakota Public Utilities Commission (SD PUC).

11 I have been at the SD PUC for over two years now. During this time I worked on
12 a variety of matters in the telecom, natural gas, and electric industries. The major
13 dockets that I worked on were transmission siting dockets, pipeline siting dockets, and
14 energy efficiency dockets. I also attended a number of trainings on public utility policy
15 issues, electric grid operations, regional transmission planning, electric wholesale
16 markets, and utility ratemaking.

17 **Q. On whose behalf was this testimony prepared?**

18 A. This testimony was prepared on behalf of the Staff of the South Dakota Public
19 Utilities Commission.

20 **Q. When did Dakota Access, LLC file its Application for a permit to construct
21 the Dakota Access Pipeline?**

22 A: The original application was filed on December 15, 2014.

1 **Q: Did you review Dakota Access, LLC’s Application for a permit to construct the**
2 **Dakota Access Pipeline?**

3 A. Yes. I also reviewed the exhibits, revised application, revised exhibits, and
4 discovery responses produced by all parties.

5 **Q. Were other Staff involved in the review of this petition?**

6 A. Yes. Staff Analyst Brian Rounds also assisted in reviewing the application.

7 **Q. Explain, in your words, the main role of the SDPUC Staff in the Application**
8 **proceedings.**

9 A. After receiving the application filing, Staff completed a review of the contents of
10 the Application as it relates to the Energy Facility Siting statutes, SDCL 49-41B, and
11 Energy Facility Siting Rules, ARSD 20:10:22. Staff then identified information required
12 by statute or rule that was either missing from the Application or unclear within the
13 application. Staff then requested Dakota Access to provide the information that Staff
14 believed to be missing or unclear.

15 Staff also subpoenaed experts from various State Agencies including the
16 Department of Environment and Natural Resources, Game Fish and Parks, Historic
17 Preservation Office, and Department of Revenue in order to have individuals
18 knowledgeable in their associated fields assist with Staff’s review. Staff facilitated the
19 preparation of testimony from these experts by providing questions that Staff believed
20 were relevant to the review of the Application. These experts then completed their
21 review and authored their testimony as filed in this docket.

22 Further, Staff hired two consultants to assist with reviewing the Application. The
23 first consultant, Natural Resources Group, has expertise with environmental permitting,

1 environmental impact analyses and mitigation, and socioeconomic impact analyses.
2 The second consultant, REM Pipeline Consultants, LLC, has expertise with the Pipeline
3 and Hazardous Materials Safety Administration regulations the pipeline will be subject
4 to. Staff facilitated the preparation of testimony from these consultants by providing
5 questions that Staff believed were relevant to the review of the Application. These
6 experts then completed their review and authored their testimony as filed in this docket.

7 The State experts and consultants completed a review of the application,
8 exhibits, and relevant discovery responses. Staff then relied on these individuals to
9 identify any outstanding issues they found with the applications that falls under their
10 areas of expertise. These issues will be addressed in their testimony and Staff will then
11 work with the company to address the issues or provide mitigation measures for
12 Commission consideration.

13 Finally, Staff assisted a number of intervenors and affected landowners by
14 providing responses to numerous questions on the pipeline, the siting process at the
15 PUC, and the opportunities available for these individuals to be heard by the
16 Commission. If the landowners had specific concerns with the pipeline, Staff often
17 recommended that those individuals file comments in the docket for the Commission's
18 consideration. Where appropriate, Staff also included some of the landowners'
19 questions or concerns in Staff's interrogatories sent to Dakota Access.

20 **Q. Was Dakota Access, LLC's application considered complete at the time of**
21 **filing?**

22 A. At the time of the filing, the application was generally complete. However, as
23 identified above, Staff requested further information, or clarification, from Dakota

1 Access, LLC which Staff believed were necessary in order to satisfy the requirements of
2 SDCL 49-41B and ARSD 20:10:22. Dakota Access's responses to Staff's information
3 requests are attached as Exhibit A. Staff's experts also sought information from Dakota
4 Access and any outstanding information needs would be addressed in their prefiled
5 testimony. Finally, I would also note that an Applicant supplementing its original
6 application with additional information as requested by Staff is not unusual for siting
7 dockets.

8 **Q. How many parties were granted party status?**

9 A. There were 49 individuals that were granted party status.

10 **Q. Does Staff have any recommendations regarding an appropriate indemnity**
11 **bond for road and bridge damages according to SDCL 49-41B-38?**

12 A. Yes. In response to Staff's completeness review data request number 32,
13 Dakota Access proposed an indemnity bond totaling \$15 million. For both the first
14 Keystone pipeline and Keystone XL pipeline, the Commission adopted an indemnity
15 bond amount based on ten percent of the estimated value of construction in South
16 Dakota for each year of construction. Within its Application, Dakota Access estimates
17 that construction of the pipeline and facilities in South Dakota will cost \$820 million.
18 However, according to a report prepared on November 12, 2014, by Strategic
19 Economics Group titled "An Assessment of the Economic and Fiscal Impacts of the
20 Dakota Access Pipeline in North Dakota, South Dakota, and Iowa," it is identified that of
21 the \$820 million approximately \$485.6 million will result in direct spending in South
22 Dakota. Therefore, Staff proposes that the bond amount be based on \$485.6 million.
23 Applying the same formula used for the Keystone and Keystone XL pipelines, this

1 results in a total bond amount of \$48 million. Spreading the bond amount over two
2 years of estimated construction (i.e. 2015 and 2016 as stated in the Application) would
3 equate to a \$24 million bond per year. As such, Staff recommends the Commission
4 require an indemnity bond of \$24 million for the year in which construction is to
5 commence and a second bond in the amount of \$24 million for the ensuing year,
6 including any additional period until construction and repair has been completed.
7 Finally, it should be noted that Staff would be willing to reconsider the recommended
8 bond amount should Dakota Access identify that the expected value of construction in
9 South Dakota will be less than the estimated direct spending in South Dakota as
10 provided by Strategic Economics Group. In any event, it is Staff's opinion that the
11 formula used to calculate the bond amount in this docket should be consistent with the
12 formula used in past pipeline siting dockets.

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

14 A. Yes.