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

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IN THE MATTER OF THE PETITION  
OF DAKOTA ACCESS, LLC FOR A  
PERMIT TO CONSTRUCT THE  
DAKOTA ACCESS PIPELINE

**YANKTON SIOUX TRIBE'S  
OBJECTIONS TO DAKOTA ACCESS'  
PROPOSED PERMIT CONDITIONS**

**HP14-002**

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COMES NOW Yankton Sioux Tribe ("Yankton"), by and through Jennifer S. Baker and Thomasina Real Bird with Fredericks Peebles & Morgan LLP, and hereby submits its objections to Exhibit A "Permit Conditions" to Applicant's Reply Brief.

On October 21, 2015, the Public Utilities Commission ("Commission") issued an order setting the post-hearing briefing schedule and decision date. In that order, the Commission set November 6, 2015 as the deadline for post-hearing briefs and ordered that proposed findings of fact and conclusions of law may be submitted with initial briefs. The Commission further ordered that response briefs shall be filed no later than November 20, 2015. It should be noted that the Commission set no deadline for the submission of proposed conditions or for responses or objections to proposed conditions.

On November 6, 2015, Dakota Access filed its post-hearing brief. On that date Dakota Access also filed Applicant's Proposed Findings of Fact and Conclusions of Law. As Exhibit A to Applicant's Proposed Findings of Fact and Conclusions of Law, Dakota Access filed proposed permit conditions. On November 20, 2015, Dakota Access filed Applicant's Reply Brief. As Exhibit A thereto, Dakota Access again filed proposed Permit Conditions. Dakota Access indicated in its reply brief that it had engaged in discussions with Public Utilities Commission Staff ("Staff") in crafting this second set of proposed permit conditions and that Dakota Access

and Staff had stipulated to the second set of proposed permit conditions. Yankton was never contacted or consulted regarding either set of proposed permit conditions.

Due to the inadequacy of the proposed permit conditions, Yankton asserts the following objections to the proposed permit conditions submitted by Dakota Access as Exhibit A to Applicant's Reply Brief.

### **Objections to Proposed Permit Conditions**

Dakota Access' Proposed Stipulated Condition No. 5: This condition should contain an additional subpart requiring that, prior to construction, Dakota Access shall conduct cultural resource surveys of land that has not yet been surveyed. If a route modification includes land not yet surveyed, failure to include this additional requirement would place any potential cultural resources at significant risk.

Dakota Access' Proposed Stipulated Condition No. 6: The third-to-last sentence of this condition should read: "As soon as the Dakota Access's public liaison officer has been appointed and approved, Dakota Access shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments, including the Yankton Sioux Tribe, in the vicinity of the Project." The Yankton Sioux Tribe is a local unit of government, as described in Yankton's Post-Hearing Brief, pages 23-24 and Yankton's Post-Hearing Reply Brief, pages 22-23, incorporated herein by reference. Due to Dakota Access' reluctance to acknowledge this fact, it must be incorporated into this condition.

Dakota Access' Proposed Stipulated Condition No. 9: This condition should read: "Prior to construction, Dakota Access shall commence a program of contacts with state, county, municipal, and tribal emergency response, law enforcement and highway, road and other infrastructure management agencies..." It will be important for the Tribe's law enforcement in

particular to be aware of the planned construction schedule and preparations it should make for the project in light of the risks it will pose to the Tribe's population through worker presence at the Tribe's casino. *See* Yankton's Post-Hearing Brief at 22, incorporated herein by reference; Yankton's Post-Hearing Reply Brief at 16, incorporated herein by reference.

Dakota Access' Proposed Stipulated Condition No. 11: This condition, which requires Dakota Access to comply with mitigation measures contained in certain plans that may be modified, should be revised to include the following final sentence: "Any such modifications shall be subject to Commission approval."

Dakota Access' Proposed Stipulated Condition No.12: This condition should be amended so that the final sentence reads: "Any site specific mitigation plans completed for a karst feature shall be submitted to the Commission for review and approval." The Commission's decision to grant the permit was based in part on certain plans for mitigation of various aspects of the proposed project as well as Staff witness Michael Timpson's testimony concerning the unlikelihood of encountering karst. Should Dakota Access encounter karst during construction, the Commission should have authority to approve, deny, or condition that plan just as it has the permit itself.

Dakota Access' Proposed Stipulated Condition No. 16(k): This condition addresses the discharge of saline water on landowners' lands. Dakota Access failed to disclose that saline water would be discharged onto landowner property during the hearing. Moreover, during discovery, Dakota Access informed Yankton that there would be no chemicals in the water that would be discharged. **Exhibit A** (Response to Interrogatory No. 54(E): "No byproducts or chemicals will be contained in the discharge water"). Sodium chloride, which when mixed with water is called saline, is a chemical. The fact that discharge water would include saline is a

material fact that was not disclosed by Dakota Access. Any permit should therefore prohibit Dakota Access from discharging saline water. The second sentence of this condition should be amended to read: “Dakota Access shall notify landowners prior to any spill of hazardous materials on their lands which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer’s representative.” It should further state: “The discharge of saline water is expressly prohibited.”

Dakota Access’ Proposed Stipulated Condition No. 16(q): This proposed condition would allow Dakota Access to meet its reclamation duty once permanent revegetation coverage has reached a minimum of just 70% cover as compared to similar cover in an adjacent area that is undisturbed by construction. This means that landowners would be deprived of 30% of the vegetation that currently exists, and that the land would not in actuality be fully reclaimed. Any permit should require 100% reclamation, including revegetation of 100% cover.

Dakota Access’ Proposed Stipulated Condition No. 20: This proposed condition merely requires Dakota Access to use its “best efforts” not to locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells. To adequately safeguard South Dakotans’ drinking water, this condition should wholly prohibit Dakota Access from locating fuel storage facilities within such distances.

Dakota Access’ Proposed Stipulated Condition No. 25: This proposed condition addresses an adverse weather land protection plan. Unlike Condition No. 25 in Dakota Access’ previously submitted proposed conditions, this condition includes no requirement that the Commission make the adverse weather land protection plan available to landowners. There is no

legitimate reason for restricting landowner access to this plan, and in the interests of transparency and local awareness, such plan should be made available to local landowners.

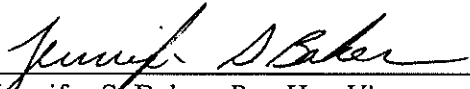
Dakota Access' Proposed Stipulated Condition No. 28: This condition permits Dakota Access and a landowner to stipulate in writing for Dakota Access to vary from certain conditions contained in the final order. This condition must specifically enumerate each condition to which it applies, rather than including an inexhaustive list. It must further be limited to changes that impact only the land belonging to the landowner in question.

Dakota Access' Proposed Stipulated Condition No. 34: This condition should be amended to require Dakota Access to obtain a determination by the Commission that the facility emergency response plan, written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies, and the integrity management program will adequately protect the interests of South Dakota and its citizens prior to construction. These documents should be filed with the Commission and made available to the public for an opportunity to comment prior to the Commission making its determination. This condition should further be amended to accurately reflect the process for confidential filings with the Commission. The second sentence of the second paragraph should be amended to read: "If Dakota Access files a request for confidential treatment of information pursuant to ARSD 20:10:01:41 granted confidential treatment by the Commission" rather than "If information is filed as 'confidential...'"

Dakota Access' Proposed Stipulated Condition No. 43: This proposed condition is inadequate to protect cultural resources that would be disturbed by the proposed project. Any permit should require Dakota Access to have a certified archeologist on site at all times during

construction and to immediately and directly notify Yankton and any other potentially affected tribes in the event of an unanticipated discovery.

Respectfully submitted this 9<sup>th</sup> day of December, 2015.

  
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