

EXHIBIT

A

**DECLARATION OF MIKE FUTCH IN SUPPORT OF
DAKOTA ACCESS, LLC'S APPLICATION FOR PARTY STATUS**

1. My name is Mike Futch. I am the Vice President of Interstate Engineering at Energy Transfer, LP (“Energy Transfer”), the constructor, operation and an equity owner of Dakota Access, LLC (“Dakota Access”). My business address is 1300 Main Street, Houston, Texas 77002.

2. I have over 27 years of experience with Energy Transfer pipelines. I have held various roles throughout Energy Transfer, and today have responsibility for all project development and execution for Energy Transfer pipelines. I have overseen interstate and intrastate pipeline transmission projects across more than 20 states, managed engineering and design for an LNG expansion facility, and served as the project manager for the Dakota Access Pipeline (“DAPL”) during its construction. I hold a B.S. in Construction Engineering from Louisiana Tech University. In 2015 I was recognized as a Distinguished Alumnus from Louisiana Tech University.

3. This declaration supports Dakota Access’ Petition to Intervene in proceedings related to SCS Carbon Transport, LLC’s (“Summit”) proposed carbon dioxide transmission pipeline (the “CO₂ Pipeline”). Specifically, this declaration supports Dakota Access’ Petition to Intervene in two ways.

4. First, this declaration provides context and information regarding the CO₂ Pipeline’s proposed crossings of DAPL. This declaration further addresses the state of discussions (or lack of discussions) between Summit and Dakota Access regarding crossing agreements needed for the CO₂ Pipeline to safely cross DAPL.

5. Second, because (as addressed further below) Summit has not provided needed specificity and information regarding its proposed crossings or entered into crossing agreements with Dakota Access, this declaration provides a list of conditions required to ensure that any

proposed crossing or encroachment of DAPL can be completed safely and without impairing DAPL's reliable operation. The conditions provided herein are reasonable—similar conditions have already been required by courts in other jurisdictions.

6. In addition, Mr. Alec Roberts is also filing a declaration in support of Dakota Access' Petition. Mr. Roberts' declaration addresses why it is especially important that any crossing or encroachment of DAPL by the CO₂ Pipeline be subject to the crossing conditions identified below or to a formal crossing agreement, so that such crossings or encroachments do not (i) jeopardize DAPL's operations, (ii) create a threat of serious injury to the environment or social and economic condition of inhabitants or expected inhabitants of South Dakota, or (iii) substantially impair the health, safety, or welfare of South Dakota's inhabitants. Mr. Roberts addresses DAPL's unique importance to the State of South Dakota, the region, and the United States as a whole, including its role as a common carrier pipeline that carries more than 55 percent of crude oil produced in the Bakken region and more than 5 percent of all oil produced in the United States, and the impacts an avoidable outage or curtailment would have on the agricultural industry.

7. **Summit's Proposed Crossings of DAPL and Related Discussions.** In the pipeline industry and consistent with industry practice, pipeline crossings are typically resolved through collaboration between the existing pipeline owner and the developer of a new pipeline. The standard, industry-wide crossing practice is as follows: first, a due-diligence corridor is established and the planned pipeline requests that an existing pipeline allow it to cross in particular locations under a transparent set of conditions; next, the pipeline to be crossed reviews the information provided, furnishes any suggested changes to the proposed crossing conditions, and, sometimes requests additional information from the crossing pipeline; then, the crossing

pipeline typically provides that information; and finally the crossed pipeline reviews that information and, where reasonable, agrees to the requested crossing (or a few crossings) sometimes with additional conditions to be met by the crossing pipeline. These conditions are then agreed to among the pipelines as part of a crossing agreement. The purpose of this process is to ensure safety and to fulfill the joint responsibility to prevent damage. Although Dakota Access routinely engages in this process, Summit has not done so with respect to its proposed crossings and encroachments of DAPL.

8. Dakota Access first learned that Summit was planning to construct the CO₂ Pipeline, potentially alongside and across DAPL, in September 2021 when a notice regarding the proposed pipeline was sent by mail to Dakota Access' Houston, Texas office.

9. Since 2021, Dakota Access has repeatedly requested detailed information about Summit's planned DAPL crossings so that it can evaluate the crossings and propose reasonable conditions. Unfortunately, until the virtual eve of Summit's application filing, Summit has largely refused to engage in a meaningful discussion regarding its proposed construction and has effectively told Dakota Access that the CO₂ Pipeline will cross DAPL, and that Dakota Access has little to no say in the matter. Dakota Access has made repeated efforts to engage in discussions with Summit about these concerns—including at least three conversations in 2021, and multiple e-mails and phone calls in 2022, requesting .kmz files and other information related to Summit.¹ Dakota Access continued its efforts to communicate with Summit into 2023 and 2024 and, most recently, Dakota Access contacted Summit on October 28, November 6, and November 11, 2024

¹ In total, Dakota Access has contacted Summit on more than a dozen occasions about these concerns, including by e-mail and phone calls.

in order to attempt to, again, make progress in addressing crossing conditions with Summit prior to the filing of this Petition. Summit finally met with certain representatives of Dakota Access virtually for about only 20 minutes on November 18, 2024, on the eve of its Application filing—presumably because Dakota Access’ Petition to Intervene was inevitable by that point. The information provided orally in this short virtual meeting by Summit was vague and noncommittal. Among other things, Summit claimed it would provide certain technical information to Dakota Access, but that other required information was not yet available. No clear answers were given as to specific questions from Dakota Access as to its plans to cross or parallel DAPL. But Summit claimed it would provide the long-requested .kmz files if Dakota Access would enter into a non-disclosure agreement with Summit. Dakota Access executed and returned a non-disclosure agreement the next day, on November 19, 2024, but has yet to receive the .kmz files, or any other information necessary to conduct a technical feasibility analysis of any proposed crossing, paralleling, or encroachment of the DAPL. Dakota Access continues to wait for .kmz files and more detailed information from Summit including, at a minimum, as-built drawings, engineering alignment drawings, and crossing profile exhibits.

10. In short, Summit has largely been unwilling to engage in meaningful discussions regarding its proposed project and the potential crossings of DAPL.

11. Summit has so far provided only minimal information about its proposed crossings, and to this day it remains unclear where Summit actually proposes to cross DAPL, or even how many times the CO₂ Pipeline is planned to cross DAPL. By reviewing publicly available maps, and based on the limited conversations that have occurred between Dakota Access and Summit, I understand that the CO₂ Pipeline intends to cross DAPL in multiple locations in the State of

South Dakota and may even collocate with DAPL at certain points within the state.² Dakota Access has received limited verbal and written information from Summit regarding its crossing or encroachment plans of DAPL thus far. That limited information has largely been conceptual in nature, lacking reasonable technical detail to allow for a meaningful crossing analysis, and has often been inconsistent. This includes a general understanding that Summit is planning more than 40 crossings of DAPL. The limited information provided so far by Summit and the lack of detailed crossing and encroachment plans with reasonable safety conditions causes Dakota Access significant concerns. Due to a lack of reliable and detailed information provided by Summit, Dakota Access is unaware of the true number of crossings and the technical feasibility of such crossings.

12. Each crossing potentially creates a risk of harm to DAPL and, without adequate technical information from Summit and appropriate crossing conditions implemented during construction, the CO₂ Pipeline potentially represents a threat to DAPL's safe and reliable continued operations. Typically in the pipeline industry on projects of this scale, detailed design information of the proposed project is provided to the existing pipeline, particularly where the developer recognizes the significance and uniqueness of existing critical infrastructure in the siting area and their shared responsibility to prevent damage to existing infrastructure. The existing pipeline then evaluates the technical feasibility of the proposed crossings, works with the

² Typically a proposed pipeline (or other piece of infrastructure) will attempt to cross an existing pipeline (or other piece of infrastructure) as few times as necessary. While DAPL and the CO₂ Pipeline generally pass through the same regions, Summit's publicly proposed route seemingly jumps back and forth across DAPL's route multiple times. In addition, Summit has planned what appear to be numerous "feeder" lines through which it will presumably gather product for shipment, many of which also appear to cross DAPL. Dakota Access does not have sufficient information to know whether the general information included in these public documents are current or reliable. Because each crossing poses its own risks and challenges, a reasonable crossing agreement would include provisions that would assist the parties in limiting the number of overall crossings to only those that are strictly necessary to achieve the goals of both projects.

project proponent on agreed crossing conditions, and the proposed pipeline crossings are eventually allowed, subject to appropriate conditions to protect the existing pipeline, landowners' property, and the environment.

13. It may be the case that through collaboration and cooperation some of the potential crossings can be eliminated, thereby reducing potential future risk to DAPL, Summit's proposed project, landowners' property and the environment. DAPL and landowners have a joint interest in limiting the quantity of crossings and the associated impacts to property.

14. Dakota Access has made multiple attempts to coordinate with Summit. In light of the ongoing public proceedings in this and other states relating to the CO₂ Pipeline, Dakota Access reached out to Summit in 2023 to attempt again to discuss a crossing agreement for any proposed crossings of DAPL. Summit has largely refused to provide industry-standard information by which Dakota Access could tailor proposed industry-standard conditions to Summit's proposed crossings. This information, which Dakota Access has requested, includes detailed .kmz files and alignment sheets to allow for a technical review of the proposed crossing locations. Summit has provided very limited, potentially outdated information regarding a limited subset of its proposed crossings, such as a screenshot of a proposed route across DAPL-owned fee property in South Dakota (provided in March 2022) and verbal explanations (provided in July 2022) that the proposed pipeline would cross and parallel DAPL at several locations. The limited information provided by Summit to date is not close to the level of collaboration and technical information sharing that DAPL needs to evaluate these proposed crossings.

15. Even without having the necessary technical information to evaluate each crossing for technical feasibility, for the sake of helping the matter along, in September of 2023, Dakota Access proposed general master terms of crossing to Summit with the caveat that each crossing

location would need to be evaluated for technical feasibility and the potential of additional conditions. Summit representatives rejected a conversation on the matter, responding by stating that its easements do not require it to follow any additional conditions when crossing DAPL. Dakota Access was troubled with this response as it left our representatives with the impression that Summit did not prioritize safety, integrity, and damage prevention at the forefront of the design phase for its project, particularly as it relates to DAPL—one of the most significant pipelines in the U.S.

16. As of today, more than a year later, Summit has still not provided meaningful information relating to its proposed crossings. Summit’s longstanding unwillingness to provide basic and reliable information—such as a map of its proposed route identifying the location of crossings—required to make sure that DAPL is not jeopardized is a clear departure from normal industry practice. The information Dakota Access has requested from Summit is necessary to tailor conditions to specific crossings and to determine whether each crossing is even necessary in the first place.³ For instance, .kmz files and alignment sheets would help indicate information such as the locations of the proposed crossings, the proposed angles of crossings, the proposed depths of crossings, the proposed method of crossing, and proposed clearances between the crossing and crossed pipelines. Such information is key to making sure that the crossing is carried out in as safe and least-disruptive of a manner as possible. The .kmz files and alignment sheets will also help DAPL find encroachment area between the crossing locations where overlapping rights-of-way may be present. Where possible, DAPL seeks to preserve the conditions of its

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permanent easement to the satisfaction of landowners and therefore does not generally allow other parties to use its easements for spoil storage, parking, or other construction equipment travel, unless agreed otherwise after a full and complete engineering conflicts analysis as part of a formal crossing and encroachment agreement and with landowner permission.

17. Summit has also refused to provide Dakota Access other information for any of their proposed crossings that would indicate information such as the location of the proposed crossing, the proposed angle of crossing, the proposed depth of crossing, the proposed method of crossing, or any similar information. Summit has not demonstrated that it is willing to execute reasonable crossing agreements or even to provide information by which Dakota Access could tailor proposed conditions to particular crossings.

18. **Proposed Crossing Conditions for DAPL-Summit Crossings.** The proposed crossing conditions are intended to prevent damage to DAPL, the environment, landowners, and to help protect the integrity of DAPL by, for instance, ensuring appropriate clearances between the two pipelines and ensuring that the number and length of crossings are minimized. These crossing conditions will minimize the risk of serious injury to the environment, social and economic condition of South Dakota's inhabitants or expected inhabitants, and will help ensure the facility will not substantially impair the health, safety, or welfare of the state's inhabitants. Moreover, Dakota Access' proposed conditions will protect the integrity of its pipe because ensuring appropriate clearances, coatings, and construction and maintenance practices minimizes the risk that Summit's contractors will inadvertently damage DAPL. Maintenance of water vapor and cathodic protection mitigate risk to DAPL by limiting potential issues on the CO₂ Pipeline that could negatively impact DAPL, due to the close proximity between the pipelines at their crossings. The crossing conditions proposed herein are also important in that many of DAPL's

existing easements include ongoing maintenance obligations. The proposed crossing conditions, among other benefits, will allow Dakota Access to continue to fulfill its ongoing maintenance obligations, by ensuring sufficient clearances to maintain DAPL's own systems.

19. The following proposed crossing conditions should reduce the risk of threats to DAPL's continued safe and reliable operation:

- a. Summit shall notify Dakota Access at least 48 hours in advance of any construction activity at or near any portion of DAPL's right-of-way in South Dakota, and Summit must contact the South Dakota-approved Notification Center at 811 prior to construction;
- b. Summit shall positively locate the CO₂ Pipeline for Dakota Access at any proposed crossing location in South Dakota within 48 hours of request by Dakota Access;
- c. No heavy equipment or wheeled construction vehicles of any type will be permitted to work directly on DAPL's right-of-way without utilizing timber mats or air-bridges placed over DAPL's centerline and covering the entire permanent easement at the crossing location;
- d. Any excavation by Summit within one pipeline diameter (i.e., 30 inches) of DAPL at each proposed crossing location will be performed by hand;
- e. A conventional bore or other suitable trenchless technique shall be used by Summit for each individual crossing of DAPL;
- f. There will be no less than two pipeline diameters (i.e., 60 inches) of separation between the CO₂ Pipeline and DAPL;
- g. The CO₂ Pipeline will cross DAPL by angles of no less than 80 degrees, with 90 degrees preferred;

- h. Summit will use a reputable construction contractor to construct the CO₂ Pipeline at crossings of DAPL in South Dakota;
- i. The CO₂ Pipeline will have an abrasive resistant coating overlay where it crosses DAPL extending at least the entire width of the DAPL permanent easement;
- j. The CO₂ Pipeline will be cathodically protected and must have test leads installed at each DAPL crossing location;
- k. Summit will monitor cathodic protection at all crossing locations of DAPL; and
- l. Summit will ensure that water vapor in the CO₂ Pipeline gas stream and monitoring and control of same are in compliance with state and federal guidelines and regulations.

20. The pipeline crossing conditions Dakota Access is proposing reflect industry-standard terms and conditions. These proposed crossing conditions are also consistent with conditions approved in other jurisdictions. For instance, these conditions have been adopted for all crossings depicted in the matter shown in Attachment A hereto, provided that, where the conditions specify specific distances (for example, between pipelines), those distances are customarily determined based upon a comparison of pipeline sizes and, accordingly, differ slightly here from the conditions identified in Attachment A.

Executed: November 22, 2024



Mike Futch