

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

IN THE MATTER OF THE )  
APPLICATION OF BY SCS )  
CARBON TRANSPORT, LLC )  
FOR A PERMIT TO CONSTRUCT )  
A CARBON DIOXIDE )  
TRANSMISSION PIPELINE )

Docket No. HP24-001

**DAKOTA ACCESS, LLC'S**  
**APPLICATION FOR PARTY STATUS**  
**AND REQUEST FOR RELIEF**

Dakota Access, LLC (“Dakota Access”) by and through its undersigned counsel and pursuant to South Dakota Codified Law (“SDCL”) § 49-41B-17(4) and the Administrative Rules of South Dakota (“A.R.S.D.”) 20:10:22:40; 20:10:01:15.02, hereby submits this Application for Party Status (“Application”) to the South Dakota Public Utilities Commission (“Commission”) in the above-captioned proceeding filed by SCS Carbon Transport, LLC (“Summit”) and for the relief requested herein. In support thereof, Dakota Access states as follows:

1. Summit filed an application dated November 19, 2024, in the above-titled Docket for a permit to construct the SCS Carbon Transport LLC Pipeline (the “CO<sub>2</sub> Pipeline”) in South Dakota (“Summit Application”). The Summit Application describes the overall CO<sub>2</sub> Pipeline project as including “approximately 2500 miles of pipelines,” with “approximately 698 miles of carbon dioxide (CO<sub>2</sub>) pipeline and associated facilities in South Dakota.” Summit Application at 1, 4. The proposed construction schedule in South Dakota would commence “in the first quarter of 2026 and complete construction in 2027” with the “pipeline in service in 2027.” Summit Application at 9. Among other things, the Summit Application states the CO<sub>2</sub> Pipeline’s preferred and alternative routes were developed “with an ultimate desire to collocate the pipeline with certain features” including “existing pipelines.” Summit Application at 40. The Summit Application does *not*, however, identify the pipelines that Summit intends to “collocate” with, and specific to this

Application, it does not address the Dakota Access Pipeline (“DAPL”) nor does the Summit Application provide mitigation measures to prevent damage to DAPL for any planned crossings or encroachments. With respect to the CO<sub>2</sub> Pipeline crossing of collocated pipelines, presumably like DAPL, the Summit Application provides that:

The [Summit] Applicant will access the South Dakota 811 Call Before You Dig system to locate all underground utilities and pipelines and will contact all utility owners and all pipeline gathering/transmission/distribution system owners prior to construction activities. *If necessary, utility and pipeline crossing agreements will be developed with the owners.*

Summit Application at 50 (emphasis added). However, as detailed herein and in the attached declarations, Summit has largely refused to talk to Dakota Access about pipeline crossing agreements and necessary mitigation measures to prevent damage to DAPL.<sup>1</sup>

2. As a general policy matter, Dakota Access is “pro-development”. However, Dakota Access takes no position as to the overall merits of whether the Commission should grant or deny the Summit Application to construct the CO<sub>2</sub> Pipeline, nor should this Application be construed as supportive or unsupportive of the CO<sub>2</sub> Pipeline being approved or denied in this proceeding.

3. Dakota Access files this Application to address specific issues and concerns regarding the proposed CO<sub>2</sub> Pipeline’s potential crossings and encroachments of Dakota Access’ facilities. Damage prevention is the shared responsibility of project proponents, like Summit, the State, and the owners/operators of existing infrastructure like DAPL that may be impacted by the

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<sup>1</sup> The lack of this information for pipeline collocation and crossings is particularly surprising, given that the Summit Application otherwise indicates that it “will detail crossing methodologies and mitigation measures to be used to avoid impacts” to rural water systems in separate crossing agreements, and provides examples of such mitigation measures, including “installing the pipeline with a minimum of 24 inches of vertical separation while the existing utility remains in operation.” Summit Application at 71 (emphasis added). Although appropriate measures are discussed in more detail below and explained in the attached declarations, the 24 inches of vertical separation proposed for rural water crossings will not be adequate to ensure the crossings addressed in this Petition are completed safely, with minimal risk of harm or potential disruption to Dakota Access’ operations.

project. As outlined below and in the attached Declaration of Mr. Mike Futch, as of the date of this Application and after several years of good faith attempts by Dakota Access to address its concerns on crossing issues, Summit has not addressed Dakota Access' concerns regarding that shared responsibility for damage prevention. Therefore, Dakota Access respectfully requests that the Commission include the reasonable crossing conditions proposed here by Dakota Access, should the Commission decide to authorize construction of the CO<sub>2</sub> pipeline. These conditions are appropriate because they will help to ensure that any crossings or encroachments of Dakota Access' facilities are carried out in as safe and least-disruptive of a manner as possible (as discussed below), because including these crossing conditions are necessary for the Commission to find that Summit has satisfied its burden of proof under South Dakota law,<sup>2</sup> and because such conditions would satisfy Summit's, the State's and Dakota Access's shared responsibility for damage prevention.

4. SDCL 49-41B-17(4) provides the basis for Dakota Access' Application in this proceeding. Under that statute, "[t]he parties to a proceeding under this chapter unless otherwise provided include: ... (4) Any person residing in the area where the facility is proposed to be sited, or any directly interested person if timely application therefore is made as determined by the commission pursuant to rule. An application for party status in a proceeding under this chapter must contain a detailed statement of the interests and reasons prompting the application."

5. Dakota Access is a "directly interested person" in this proceeding. Dakota Access and its affiliates own and operate the Dakota Access Pipeline ("DAPL").

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<sup>2</sup> Summit bears the burden of proof in this proceeding, including its burden to show that the CO<sub>2</sub> Pipeline will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants, and that the facility will not substantially impair the health, safety or welfare of the inhabitants. *See* SDCL § 49-41B-22 (2)-(3) (2024). Summit cannot satisfy this criteria without showing that it will abide by the reasonable crossing conditions proposed as part of this Application.

6. DAPL is an approximately 1,200-mile common-carrier crude oil pipeline that originates near Stanley, North Dakota, and terminates at a crude oil terminal in Pakota, Illinois (the “Pakota Hub”). At the Pakota Hub, DAPL connects to the Energy Transfer Crude Oil Pipeline (“ETCOP”), allowing crude oil to be transported to two crude oil distribution terminals in Nederland, Texas. DAPL, with its connectivity to ETCOP, is the only pipeline system that provides direct transportation service from the Bakken to the Gulf Coast refinery region.

7. The Commission granted Dakota Access authorization to construct DAPL across thirteen counties in Docket No. HP14-002 on December 14, 2015, which included certain pump stations.

8. Construction on DAPL was substantially complete in the first quarter of 2017 and the system was placed in service in June of 2017. Since then, DAPL has safely transported over 1.4 billion barrels of crude oil from its origin, through the State of South Dakota, and onward without a spill or release on its mainline.

9. Importantly, DAPL is unlike any Transmission Facility or Utility<sup>3</sup> in the state, and is one of a small handful of its kind in the United States. It currently transports approximately 5% of all U.S. production, accounting for 55% of Bakken-produced crude. This transportation service has significant direct and indirect economic impacts on the country, state, and region, and greatly benefits the South Dakota agricultural industry, as discussed below. Under South Dakota law, Summit is required to demonstrate that the CO<sub>2</sub> Pipeline will not pose a threat of serious injury to the environment or social and economic condition of inhabitants or expected inhabitants, and will not substantially impair the health, safety or welfare of South Dakota’s inhabitants. Summit, the State, and Dakota Access have a shared responsibility to prevent damage to existing infrastructure

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<sup>3</sup> DAPL is considered both a “utility” and a “transmission facility” pursuant to SDCL 49-41B-2(12); 49-41B-2.1.

in the State. Without the conditions proposed here being included in any authorization the Commission may grant, Summit will be unable to meet its evidentiary burden and the State, Summit and Dakota Access cannot meet their shared burden of damage mitigation.

10. Although Dakota Access' proposed crossing conditions are reasonable and are consistent with conditions approved in other jurisdictions,<sup>4</sup> DAPL is, by far, the largest transporter of crude oil from the Bakken. With its significance to South Dakota, the region, and the United States, including the crossing conditions with the safest means and practices in any approval for the CO<sub>2</sub> Pipeline the Commission may grant is necessary to protect DAPL when the CO<sub>2</sub> pipeline crosses or encroaches DAPL.

11. DAPL is unique among Transmission Facilities (and other utilities) in the region because of its special significance to the country's energy grid, energy independence and national security. DAPL, with its connectivity to ETCOP, is one of only a few pipeline systems that can supply oil to the United States Strategic Petroleum Reserve, a critical component to U.S. national security. Moreover, DAPL is connected to 74.6% of refining capacity in Petroleum Administration for Defense Districts ("PADD") 2 and PADD 3 and 57.8% of total U.S. refining capacity, through direct and indirect interconnects. The refineries accessed by DAPL produce petroleum products like gasoline, heating oil, and the pre-cursor petrochemicals used in the medical and consumer product industries throughout the United States. In short, DAPL represents a critical supply element of the United States' oil pipeline network; its continued and uninterrupted operation is important to the entire United States. Interruption of flows on DAPL to refineries could have significant negative economic and national security impacts.

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<sup>4</sup> See, e.g., Att. A to the attached Declaration of Mr. Mike Futch.

12. The state of South Dakota also greatly benefits from DAPL. Between 2017 and 2022, DAPL paid over \$33 million in ad valorem taxes to the thirteen South Dakota counties it traverses, with additional tax revenue to be paid in the future.<sup>5</sup> These tax dollars have been faithfully invested by the counties to support, amongst other things, school districts, townships, fire districts, roadway and bridge maintenance, and essential county services such as ambulances, sheriff service officers, emergency dispatchers, and much needed equipment for emergency and fire response.

13. In addition to contributing ad valorem tax revenues, DAPL provides important economic benefits for South Dakota farmers. As detailed in the attached Declaration of Mr. Alec Roberts, DAPL has resulted in lower transportation costs for South Dakota's agricultural industry. Since being placed in service in 2017, DAPL has replaced rail as the primary means of transport for crude oil in the region. This has relieved rail network pressure and bottlenecks once caused by crude oil rail tankers and the associated rail network costs that were often on terms that were cost prohibitive to South Dakota farmers. Put differently, there is only so much rail transport capacity available in the state—so, when that transportation capacity is no longer constrained by oil transport, South Dakota farmers find it more cost effective to get their products to market.

14. In the event of an outage or curtailment of service on DAPL due to a line strike on the pipeline from the CO<sub>2</sub> Pipeline's crossing, much of the crude oil currently shipping on DAPL would likely shift back to the Midwest rail system, once again resulting in the displacement of agricultural products (including South Dakota agricultural products) currently utilizing that rail

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<sup>5</sup> The tax benefits quantified herein also do not account for economic benefits that accrued during DAPL's construction phase, or that will accrue during additional future construction and maintenance projects. Large construction projects, like DAPL, can provide hundreds of jobs, resulting in additional state income tax revenue, and these sorts of projects generate significant local economic activity because construction workers typically live in and around, and spend their money in, the communities where the project is being built.

capacity. As shown in the Elaine Kub report attached to Mr. Roberts' declaration ("the Ag Transportation Report"), the economic impacts associated with increased crude transportation by rail can be calculated based upon actual experience from the period just before DAPL went into service. And those impacts are significant.

15. The Ag Transportation Report evaluates historical data to identify the impact that competition with oil transportation can have on the cost of transporting agricultural products. In 2013 and 2014, before DAPL began operations, Bakken oil output that has more recently flowed on DAPL instead flowed on Midwestern rail routes. The resultant rail congestion caused severe bottlenecks in the Midwest rail system, and the economic hardship experienced by the agriculture industry as a result of that congestion is well documented, as shown in the Ag Transportation Report. The Ag Transportation Report considers data from multiple sources and time frames and estimates that *annual* losses to South Dakota's agricultural industry *alone* could be as much as \$300 million. *See* Ag Transportation Report at 6. This includes roughly \$160 million in *annual* losses to South Dakota's grain producers (who ship nearly 50% of their product on the Midwest rail system) and roughly \$130 million in *annual* losses to South Dakota's ethanol industry.

16. Summit, the State, and Dakota Access have a shared damage prevention responsibility and should do everything possible to prevent damage to DAPL, the environment, landowners, and the State from line strikes or other events that could occur during construction of the CO<sub>2</sub> Pipeline. DAPL must operate consistently, safely, and reliably to deliver these important benefits; there is no other pipeline comparable to DAPL, nor is there any other reasonable alternative that is capable of providing the same low-cost, high-reliability service, in the event DAPL is taken out of service either on a short- or long-term basis due to a line strike or other damage caused during construction of the CO<sub>2</sub> Pipeline.

17. Dakota Access' interest in these proceedings arises from its understanding that the CO<sub>2</sub> Pipeline intends to cross DAPL in multiple locations and may even attempt to collocate with DAPL at certain points within the state. Dakota Access has received very limited verbal and written information from Summit regarding its crossing or encroachment plans of DAPL thus far. That limited information has largely been at a very high level, lacking specific, technical detail to allow for a meaningful crossing analysis. And to the extent Dakota Access has received any crossing related information, it has often been inconsistent. This includes only the most basic information that Summit is planning more than 40 crossings of DAPL and inconsistent information on collocation of pipelines, including abutting Dakota Access easements and the potential use of Dakota Access easements for temporary workspace, travel lanes, and spoil pile storage. 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. The Commission should be similarly concerned given DAPL's overall economic importance.

18. 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 construction of the CO<sub>2</sub> Pipeline. 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, in order to attempt to, again, make progress in addressing crossing conditions with Summit prior to the filing of this Petition. 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.



19. Summit finally met virtually with Dakota Access on November 18, 2024 – for about only 20 minutes, on the eve of its Application filing. Among other things, Summit claimed it would provide Dakota Access 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 as of this filing has not yet received the promised .kmz files. Other requested information, such as alignment sheets and engineering drawings were “not yet available”. In any event, it remains to be seen whether this 20-minute virtual meeting with Summit was a meaningful step towards resolving the concerns raised in this Application or a “check the box” effort for Summit. Dakota Access continues to wait for .kmz files and more detailed information from Summit. Importantly, to ensure safe crossings and encroachments of the magnitude proposed by Summit (as Dakota Access currently understands), multiple technical review meetings involving engineers, staff and other personnel are required. And a significant amount of technical data must be provided by the project proponent for those collaborative meetings to be meaningful. This industry standard collaboration effort requires significant manpower and effort between the existing pipeline owner (Dakota Access) and the project proponent (Summit). Summit has thus far been unwilling to engage in such a collaboration.

20. Each crossing of DAPL by the CO<sub>2</sub> Pipeline potentially creates a risk of harm to DAPL and, without adequate technical information from Summit and appropriate crossing conditions implemented during construction, the CO<sub>2</sub> 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 project proponent on crossing conditions, and the proposed pipeline crossings are eventually allowed subject to appropriate conditions to protect the existing pipeline, landowners' property, and the environment.

21. Dakota Access first learned that Summit was planning to construct its CO<sub>2</sub> Pipeline alongside and across DAPL in September 2021. 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.<sup>6</sup> Unfortunately, until granting a 20 minute virtual meeting on the eve of its Application filing, Summit has largely refused to engage in a meaningful discussion regarding its proposed construction and has effectively told Dakota Access that the CO<sub>2</sub> Pipeline will cross DAPL, and that Dakota Access has little to no say in the matter.<sup>7</sup> In short, Summit has historically been unwilling to engage in meaningful discussions regarding its proposed project and the potential crossings of DAPL. Summit's stiff arm unfortunately necessitates this Application.

22. Dakota Access has attempted to resolve its damage prevention concerns with Summit and without the Commission's involvement. Dakota Access has been forced to file this Application as a last resort to prevent damage and to ensure DAPL's continued safe and reliable operations.

23. 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

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<sup>6</sup> In total, Dakota Access has contacted Summit on more than a dozen occasions about these concerns, including by e-mail and phone calls.

<sup>7</sup> A fulsome discussion of Dakota Access' attempts to communicate with Summit is provided in the attached declaration of Mr. Mike Futch.

alignment sheets and drawings 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. However, 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.

24. 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. Shockingly, Summit representatives rejected a conversation on the matter, responding to this proposal by stating that its easements do not require it to follow any additional conditions when crossing DAPL.<sup>8</sup>

25. 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.<sup>9</sup> 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

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<sup>8</sup> The lack of meaningful conversation or information regarding DAPL crossings is also surprising given the detailed nature of the Application, including specific details related to other types of crossings (e.g., stream crossings).

<sup>9</sup> 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.

and least disruptive of a manner as possible. The .kmz files and alignment sheets will also help DAPL find encroachment areas between the crossing locations where overlapping rights-of-way may be present. Where possible, DAPL seeks to preserve the conditions of its 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.

26. Summit's longstanding unwillingness to provide basic and reliable information—such as a map of its proposed route identifying the number and location of crossings—required to make sure that DAPL is not jeopardized is a clear departure from normal industry practice, where pipeline crossings are typically resolved through collaboration.<sup>10</sup> Summit bears the burden of proof in this proceeding, including its burden to show that the CO<sub>2</sub> Pipeline will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants, and that the facility will not substantially impair the health, safety or welfare of the inhabitants.<sup>11</sup> To do that, Summit must provide the necessary information to DAPL so that its proposed crossings can be carried out under reasonable and appropriate conditions needed to safeguard DAPL's facilities, landowners' property, and the environment.

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<sup>10</sup> Under the standard, industry-wide crossing practice, 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 incorporated into a crossing agreement. Although Dakota Access routinely engages in this process, Summit has not done so with DAPL.

<sup>11</sup> See SDCL § 49-41B-22 (2)-(3).

27. Despite the concerns expressed here regarding the CO<sub>2</sub> Pipeline and its proposed crossings and encroachments of DAPL, Dakota Access is generally supportive of infrastructure development and the construction of pipelines across the country. Pipeline construction, however—and particularly pipeline crossings of infrastructure like DAPL—must be completed subject to appropriate conditions to ensure the safety of the pipeline being crossed and surrounding landowners and the environment. The terms of these conditions are particularly important here because DAPL is unlike any other transmission facility, pipeline, or utility in the state. Accordingly, Dakota Access requests that the Commission include the crossing conditions outlined below and described in the attached Declaration of Mr. Mike Futch in any Order authorizing construction of the CO<sub>2</sub> Pipeline, for each proposed crossing or encroachment of DAPL.

28. In the alternative, Dakota Access requests that the Commission hold this proceeding in abeyance pending the completion of crossing agreements between Dakota Access and Summit for each of the proposed crossings and encroachments. In its Application, Summit promises that “*utility and pipeline crossing agreements will be developed with the owners*” of pipelines it intends to cross, presumably including Dakota Access. Summit Application at 50 (emphasis added). Dakota Access has been, and remains, willing to engage in technical collaboration with Summit that would lead to a formal crossing and encroachment agreement for all of Summit’s proposed crossings or encroachments. Dakota Access has even signed a non-disclosure agreement (at Summit’s request). Dakota Access will withdraw its Application for Party Status in this proceeding if Summit engages collaboratively with Dakota Access regarding the crossings, colocation, or encroachments on DAPL and such collaboration results in a formal plan that Summit will implement during construction of its facilities. Similarly, Dakota Access

would also withdraw this Application in the event Summit clarified on the record that design changes result in the CO<sub>2</sub> Pipeline not crossing or encroaching upon DAPL.

29. Dakota Access emphasizes that the facts of this case are unique because DAPL is a critical component of the United States pipeline grid, because DAPL has provided and continues to provide important benefits to the State of South Dakota and the counties it traverses, because DAPL serves important national strategic energy goals, and because Summit is proposing an exorbitant number of crossings.<sup>12</sup> The risks associated with these unique facts justify the Commission's imposition of crossing conditions in this case (and will ensure that Summit meets its burden under state law), that it may not have otherwise considered in the past for other utilities in the State.

30. If the crossing conditions are resolved appropriately between Dakota Access and Summit, Dakota Access does not expect it will have any other concerns to address in this proceeding. Dakota Access is not taking (and does not intend to take) a position on whether the CO<sub>2</sub> Pipeline ought to be approved by the PUC. Dakota Access is merely asking that, if the project is approved, Summit be required to satisfy the conditions supported by Mr. Futch (or such other conditions as Summit and Dakota Access may mutually agree).

31. Dakota Access requests that the Commission include the reasonable crossing conditions outlined below in any Order authorizing construction of the CO<sub>2</sub> Pipeline, for each proposed crossing of DAPL. The pipeline crossing conditions Dakota Access is proposing reflect

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<sup>12</sup> 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 CO<sub>2</sub> 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 is current or reliable.

industry-standard terms and conditions. These proposed crossing conditions are also consistent with conditions approved in other jurisdictions.<sup>13</sup> These conditions include that:

- 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 CO<sub>2</sub> 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 CO<sub>2</sub> Pipeline and DAPL;
- g. The CO<sub>2</sub> Pipeline will cross DAPL by angles of no less than 80 degrees, with 90 degrees preferred;

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<sup>13</sup> 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 other conditions approved in other jurisdictions.

- h. Summit will use a reputable construction contractor to construct the CO<sub>2</sub> Pipeline at crossings of DAPL in South Dakota;
- i. The CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> Pipeline gas stream and monitoring and control of same are in compliance with state and federal guidelines and regulations.

32. This Application, including the threats the CO<sub>2</sub> Pipeline's construction poses to the environment, to the social and economic condition of the inhabitants or expected inhabitants and the health, safety or welfare of the inhabitants, if conditions are not imposed, is supported by the declarations of Mr. Mike Futch and Mr. Alec Roberts, which are attached hereto as Exhibit A and B respectively.

33. Dakota Access' interest in the outcome of these proceedings will not be adequately represented by any other party, nor will Dakota Access' participation delay this proceeding. Although Dakota Access has indicated that it will withdraw this Application under certain conditions, that offer is contingent on Summit actually agreeing with DAPL to reasonable crossing conditions. In the absence of any such agreement or clarification, Dakota Access intends to participate fully as a party in this matter, including but not limited to engaging in discovery and submitting testimony from multiple witnesses, including Mr. Futch and Mr. Roberts. Given the significant economic and national security implications that would occur if DAPL's flows are



interrupted, Dakota Access is prepared to submit substantial evidence addressing safe construction and crossing methods.

34. Dakota Access timely requests party status in this proceeding.

35. A copy of this Application in this proceeding has been served all on parties to this proceeding.

36. Copies of all notices, orders or pleadings in this proceeding should be served on:

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WHEREFORE, for the reasons set forth above, Dakota Access requests that the South Dakota Public Utilities Commission grant this timely Application for Party Status and permit Dakota Access to participate in this proceeding with full rights as a party. Dakota Access further requests that the Commission either include the conditions requested herein in any order authorizing the CO<sub>2</sub> Pipeline or, in the alternative, hold this proceeding in abeyance pending



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