

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

IN THE MATTER OF THE APPLICATION OF)	ORDER DENYING MOTION TO
DAKOTA ACCESS, LLC FOR AN ENERGY)	STAY PROCEEDINGS FOR
FACILITY PERMIT TO CONSTRUCT THE)	PREPARATION OF AN
DAKOTA ACCESS PIPELINE)	ENVIRONMENTAL IMPACT
)	STATEMENT

HP14-002

On December 15, 2014, the South Dakota Public Utilities Commission (Commission) received an energy facility permit application (Application) from Dakota Access, LLC (Dakota Access) pursuant to SDCL 49-41B-4 to construct the South Dakota portion of the proposed Dakota Access Pipeline (Pipeline). The Pipeline will begin in North Dakota and terminate in Patoka, Illinois, traversing 13 counties in South Dakota. The proposed 12- to 30-inch diameter pipeline will have an initial capacity of 450,000 barrels of oil per day with a total potential of up to 570,000 barrels per day. The proposed route will enter South Dakota in Campbell County at the North Dakota/South Dakota border and will extend in a southeasterly direction, exiting the state at the South Dakota/Iowa border in Lincoln County. The length of the Pipeline through South Dakota is approximately 272.3 miles. The Pipeline also would include one pump station in South Dakota located in Spink County. Pursuant to SDCL 49-41B-24, the Commission has one year from the date of application to render a decision on the Application. Several parties have been granted intervention in this docket.

On January 8, 2015, Commissioner Fiegen filed a letter delivered to Governor Dennis Daugaard advising of a conflict of interest under SDCL 49-1-9 after learning of family ownership of land on the proposed Pipeline route. On January 14, 2015, Governor Daugaard filed a letter with Secretary of State Shantel Krebs appointing State Treasurer Rich Sattgast to serve as Acting Commissioner in place of Commissioner Fiegen pursuant to SDCL 49-1-9.

On August 20, 2015, the Commission issued an Order for and Notice of Evidentiary Hearing. The hearing was set to begin on September 29, 2015.

On September 29, 2015, the Yankton Sioux Tribe, the Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action filed a Joint Motion to Stay Proceedings for Preparation of an Environmental Impact Statement (Motion to Stay Proceedings). The Yankton Sioux Tribe, the Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action requested a stay of these proceedings "for a reasonable time, to allow for the preparation of an environmental impact statement (EIS) on the Dakota Access Pipeline revised application." They stated that an EIS conducted pursuant to SDCL 34A-9-7 "will best enable the Commission to determine whether the DAPL revised application complies with the statutory criteria for a permit under SDCL 49-41B-22." They asserted that "[t]he moving parties have learned in discovery that no federal agency will prepare an EIS, thereby triggering the authority in SDCL §34A-9-2(3) for an EIS by the Commission." They stated that a recent Minnesota Court of Appeals decision "reversed a Minnesota PUC order granting a certificate of need for the Enbridge Sandpiper Pipeline project, and required preparation of an EIS because the project constituted a "'major government action' that creates the 'potential for significant environmental effects'" under the Minnesota Environmental Policy Act. *In the Matter of the Application of the North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project*

in Minnesota, A15-0016 (Minn. App. 2015) slip op. at 8 quoting Minn. Stat. §116D.04 sub 2a (2014).” They argued that “[t]he Sandpaper [sic] Pipeline Project case stands for the proposition that the environmental impacts of a major pipeline project, such as DAPL, must be evaluated utilizing the EIS process.” The individual intervenors represented by Glenn Boomsma joined in the motion at the hearing.

Dakota Access opposed the motion. Dakota Access stated that requiring an EIS under state law is permissive and within the discretion of the Commission. Dakota Access pointed out that the Commission has one year to approve or deny the Application and did not know how an EIS could be concluded within this timeframe. Dakota Access also stated that the extensive review that an applicant for a permit undergoes is preferable and allows those involved to examine and test the evidence.

After considering the arguments of the parties, the Commission voted to deny the Motion to Stay the Proceedings (Commissioner Hanson, dissenting). Pursuant to SDCL 34A-9-4, the preparation of an EIS is discretionary with an agency. *In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center*, 2013 S.D. 10, ¶ 20, 826 N.W.2d 649, 655 (citing *In re SDDS, Inc.*, 472 N.W.2d 502, 507 (S.D.1991)). By contrast, the *Sandpaper Pipeline Project* decision involved a case in which an environmental review that complied with the Minnesota Environmental Policy Act was *required to be completed* at some point during the pipeline approval process. *Sandpaper Project Pipeline*, A15-0016, slip op. at 7, (Minn. App. 2015) (emphasis added). Moreover, the Court found that “[t]he sole issue on appeal is when that review must be carried out.” *Id.* Further, the Commission points out the Motion to Stay Proceedings was filed on the same day the contested case hearing was scheduled to begin, which was nine and one-half months into a proceeding that is required to be completed within twelve months. The untimeliness of the Motion to Stay Proceedings would not have allowed the Commission to require an EIS and meet the statutory deadline. In addition, although the Intervenor supporting the motion argued that an EIS would be “the optimal manner for the PUC to exercise its discretion,” there was no showing that the current contested case proceeding is inadequate to address environmental concerns.

It is therefore

ORDERED, that the Motion to Stay Proceedings is denied.

Dated at Pierre, South Dakota, this 22nd day of October, 2015.

CERTIFICATE OF SERVICE

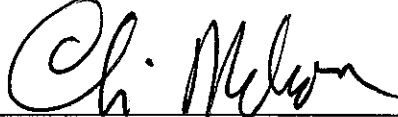
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: Rebecca West

Date: 10-22-15

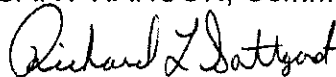
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:



CHRIS NELSON, Chairman

GARY HANSON, Commissioner (dissenting)



RICHARD L. SATTGAST, Acting Commissioner