

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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

**INTERVENORS'
POST-HEARING REPLY BRIEF**

HP14-002

COME NOW, Peggy Hoogestraat and other parties represented by Breit Law Office, P.C. (the “Intervenors”), by and through their counsel of record, and hereby respectfully submit their Post-Hearing Reply Brief.

REPLY

1. Dakota Access Has Made Misstatements of Material Fact.

a. Dakota Access Has No Eminent Domain Authority Until The Commission Issues A Permit.

In its Applicant’s Post Hearing Brief, Dakota Access states “Neither the application nor accompanying statements... contain any deliberate misstatements of material fact.” Applicant’s Post Hearing Brief at 7. This statement is false. During the pendency of its application, Dakota Access commenced multiple lawsuit against South Dakota landowners on the premise that it is already a common carrier with an “inherent” right to survey land and take property through eminent domain.

Circuit Court Judge Bradley G. Zell analyzed Dakota Access’s statement and concluded that “Dakota Access entry upon Defendants’ land would constitute ‘a taking’ under South Dakota law. Such a taking is impermissible without first obtaining the PUC permit in accordance with SDCL §49-41B-1.” Judge Zell further found that “the Legislature has not granted a pipeline applicant condemnation rights for survey purposes,

nor has this Court been granted such jurisdiction.” (Exhibits I26 and I27)(Order and Findings of Fact and Conclusions of Law dated September 2, 2015 in *Dakota Access, LLC v. Hilt, et al* (Lincoln Co. Civ. 15-145) and *Dakota Access, LLC v. Stratmeyer, et al.* (Lincoln Co. Civ. 15-138)).

The actions of Dakota Access to gain unlawful entry upon land were nothing more than oppressive bullying tactics designed to force landowners to “cry mercy” before having to shell out their hard-earned money on attorney’s fees. Dakota Access supports its application by touting that 88.14% of the land required has already been secured, indicating that nearly all affected South Dakota citizens are alleged to be in favor of the pipeline. Applicant’s Post Hearing Brief at 16. But what percentage of these easements were procured by bad faith and oppressive tactics as found in Lincoln County, without giving the landowners a true understanding of the law, and instead providing them false statements concerning Dakota Access’s “inherent” eminent domain authority?

Despite Judge Zell’s crystal clear ruling against Dakota Access, it nevertheless has now sued landowners under eminent domain, even though it has no permit from the PUC. All statements made by Dakota Access indicating that it already has eminent domain authority, namely, the statements contained in the its Verified Petitions and Complaints in these lawsuits, are false statements of material fact.

Dakota Access does not mention Judge Zell’s holding in its brief, despite the rule that a litigating party must disclose to the tribunal legal authority that is directly adverse to its position. *See In re Discipline of Arendt*, 684 NW2d 79 (SD 2004). The failure of Dakota Access to acknowledge Judge Zell’s order is a material omission of fact and tantamount to a material misstatement of fact.

Instead of helping the Commission interpret the law and apply the same to the order made by Judge Zell, pages 16 and 17 of Dakota Access's Brief display a purely self-serving interpretation of South Dakota law with no supporting citations. Dakota Access wrote:

- *“Other states may require a permit to construct before eminent domain can be utilized. South Dakota does not.”*
- *“The shipper contract reached as a result of the Open Season are incontrovertible evidence that Dakota Access is a common carrier pipeline entitled to eminent domain. No statutes hold to the contrary.”*
- *“Dakota Access followed and is following all SD laws on the books pertaining to a common carriers right to condemn private property if easements cannot be negotiated.”*

Applicant's Post Hearing Brief at 16-17. These statements are not supported by any legal authority, are contradicted by a controlling circuit court judge's ruling, and are materially false. Further mischaracterizations of South Dakota law and the facts of this case on pages 17 and 18 are too numerous to mention.

According to Dakota Access “Some intervenors also don't want Dakota Access to follow the law.” *Id.* at 19. Is that so? Intervenors respectfully request the Commission to carefully review Judge Zell's conclusions of law (Exhibits I26 and I27) and compare the same to pages 16-18 of Petitioner's Post Hearing Brief. It shows clearly which party is not following the law and instead making it up as they go along.

b. Dakota Access Routed the Pipeline Through the Greater Sioux Falls Area Only Because It Was The Shortest Route.

Another misstatement of material fact made by Dakota Access concerned the route selection through Sioux Falls, Tea and Harrisburg. Throughout the hearing testimony and its post hearing brief, Dakota Access asserts that it had “extensive” discussions with the leaders of Sioux Falls, Tea, Harrisburg and other affected communities and that none showed up to testify against the pipeline. However, Dakota Access admitted that these cities were not given any option whatsoever.

Mr. Boomsma: Here’s my question. You will agree, will you not, that the pipeline route goes through a growth area of Tea and Harrisburg? Yes or no?

Mr. Mahmoud: Well, Mr. Boomsma, if we’re going to play word games, please rephrase the question so you’re not adding prefaces or prepositional phrases **in** front of my answer because I can’t follow it. I’ll be happy to answer it, but you can’t ask me a question with a double negative or positive of whatever it is you’ve got to help me understand so I can answer it.

*** **

Mr. Boomsma: Do you agree that the pipeline route as presently proposed goes through a growth area not only by Tea but also by Harrisburg and also by Sioux Falls? Yes or no? This is not trickery.

Mr. Mahmoud: No.

Mr. Boomsma: You don’t think the pipeline goes through a growth area?

Mr. Mahmoud: The whole United States is a growth area, so I guess in general terms, yes. But we moved outside of what the predetermined growth areas were for these communities based upon their feedback.

*** **

Mr. Boomsma: Did you give them the option of not having the route at all going through their growth area?

Mr. Mahmoud: No. Of course not.

HT at 2047-2057.

Dakota Access cannot equate or infer that an absence at the hearing by these cities constitutes approval of the proposed route. These cities were not given a choice and their lack of participation at the hearing cannot be interpreted as support of the pipeline, as Dakota Access suggests. The testimony concerning the pipeline route through the Sioux Falls area contains material false statements to the extent of any alleged justification besides the fact that it is the cheapest route.

Commission Hanson's questioning of Mr. Mahmoud is worth restating:

Commissioner Hanson: Would future growth of these communities increase community impact of the expected inhabitants and the economic development - - and the economic impact?

Mr. Mahmoud: *It certainly could. Sure.*

HT at 2118.

Commissioner Hanson: ... Are you aware of any environmental reason why the route of the pipeline cannot be moved farther away from the Harrisburg - - high growth areas of Harrisburg and Tea?

Mr. Mahmoud: I would have to look. *No, sir. I'm not.*

HT at 2119.

These are undisputed facts of this case, and results in no other finding other than the fact that Dakota Access has failed to meet its burden under SDCL 49-41B-22(2), (3), and (4).

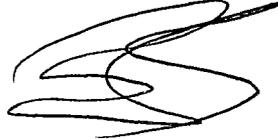
CONCLUSION

In light of the foregoing, it is evident that Dakota Access has not met their burden to prove that it has not made material misstatements of fact, violated any rules or laws, and their pipeline does not pose a threat of serious injury to the citizens of South Dakota.

The Intervenors respectfully request the Commission to deny the permit application filed by Dakota Access, LLC.

Dated this 20 day of November, 2015.

BREIT LAW OFFICE, PC



Glenn J. Boomsma
606 E. Tan Tara Circle
Sioux Falls, SD 57108
(605) 336-8234

*Attorneys for Peggy Hoogestraat,
Matthew Anderson, Kristi Anderson,
Nancy Stofferahn, Tom Stofferahn,
Ron Stofferahn, Kevin Schoffelman,
Mavis Parry, Shirley Oltmanns,
Janice Petterson, Corlis Wiebers,
Linda Goulet, Marilyn Murray,
Laurie Kunzelman, Joy Hohn,
Rodney Hohn, Orrin Geide,
Doug Bacon, Lorrie Bacon,
Margaret Hilt, Devona Smith,
Al Arends, Sherrie Fines-Tracy,
Delores Assid, and Ruth E. Arends*

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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

CERTIFICATE OF SERVICE

HP14-002

Glenn J. Boomsma of Breit Law Office, P.C. hereby certifies that on the 20th day of November, 2015, the Intervenor's Post-Hearing Reply Brief was served upon those listed on the attached PUC Service List via Electronic Filing on November 20, 2015.

The document listed above was mailed on November 20, 2015 by United States mail, first class postage thereon prepaid, a true and correct copy to the following:

Mr. John Stratmeyer
46534 272nd Street
Tea, SD 57064

BREIT LAW OFFICE, PC

By /s/ Glenn J. Boomsma
Attorney for Peggy Hoogestraat,
Matthew Anderson, Kristi Anderson,
Nancy Stofferahn, Tom Stofferahn,
Ron Stofferahn, Kevin Schoffelman,
Mavis Parry, Shirley Oltmanns,
Janice Petterson, Corlis Wiebers,
Linda Goulet, Marilyn Murray,
Laurie Kunzelman, Joy Hohn,
Rodney Hohn, Orrin Geide, Doug
Bacon, Lorrie Bacon, Margaret Hilt,
Devona Smith, Al Arends, Sherrie
Fines-Tracy, Delores Assid, and
Ruth E. Arends
606 E. Tan Tara Circle
Sioux Falls, SD 57108
(605) 336-8234

[Commission Dockets](#) | [previous page](#)

Service List
HP14-002

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us
(605) 773-3201 - voice

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us
(605) 773-3201 - voice

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us
(605) 773-3201 - voice

Mr. Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brian.rounds@state.sd.us
(605) 773-3201- voice

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us
(605) 773-3201 - voice

Mr. Brett Koenecke - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
Brett@mayadam.net
(605) 224-8803 - voice
(605) 224-6289 - fax

Ms. Kara Semmler - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
kcs@magt.com
(605) 224-8803 - voice
(605) 224-6289 - fax

016344

Mr. Tom Siguaw
Senior Project Director - Engineering
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
tom.siguaw@energytransfer.com
(713) 989-2841 - voice
(713) 989-1207 - fax

Mr. Keegan Pieper
Associate General Counsel
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
keegan.pieper@energytransfer.com
(713) 989-7003 - voice
(713) 989-1212 - fax

Mr. Stephen Veatch
Senior Director - Certificates
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
Stephen.veatch@energytransfer.com
(713) 989-2024 - voice
(713) 989-1205 - fax

Mr. Joey Mahmoud
Senior Vice President - Engineering
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
Joey.mahmoud@energytransfer.com
(713) 989-2710 - voice
(713) 989-1207 - fax

Mr. Jack Edwards
Project Manager
Dakota Access, LLC
4401 S. Technology Dr.
South Suite
Sioux Falls, SD 57106
Jack.edwards@energytransfer.com
(844) 708-2639 - voice

Ms. Jennifer Guthmiller
McPherson County Auditor
PO Box 390
Leola, SD 57456
mcpersonaud@valleytel.net
(605) 439-3314 - voice

Mr. Keith Schurr
Edmunds County Auditor
PO Box 97
Ipswich, SD 57451
Keith.schurr@state.sd.us
(605) 426-6762 - voice

Ms. Kelly Toennies
Faulk County Auditor
PO Box 309

Faulton, SD 57438
Kelly.toennies@state.sd.us
(605) 598-6224 - voice

Ms. Theresa Hodges
Spink County Auditor
210 E. Seventh Ave.
Redfield, SD 57469
spinkcoauditor@nrctv.com
(605) 472-4580 - voice

Ms. Jill Hanson
Beadle County Auditor
Suite #201
450 Third St. SW
Huron, SD 57350
auditor@beadlesd.org
(605) 353-8400 - voice

Ms. Jennifer Albrecht
Kingsbury County Auditor
PO Box 196
DeSmet, SD 57231
Jennifer.albrecht@state.sd.us
(605) 854-3832 - voice

Ms. Susan Connor
Miner County Auditor
PO Box 86
Howard, SD 57349
minerauditor@minercountysd.org
(605) 772-4671 - voice

Ms. Roberta Janke
Lake County Auditor
200 E. Center St.
Madison, SD 57042
lakeauditor@lakecountysd.com
(605) 256-7600 - voice

Ms. Geralyn Sherman
McCook County Auditor
PO Box 190
Salem, SD 57058
mccookaud@triotel.net
(605) 425-2791 - voice

Mr. Bob Litz
Minnehaha County Auditor
415 N. Dakota Ave.
Sioux Falls, SD 57104
blitz@minnehahacounty.org
(605) 367-4220 - voice

Ms. Sheila Hagemann
Turner County Auditor
PO Box 370
Parker, SD 57053
turcoaud@iw.net
(605) 297-3153 - voice

Ms. Marlene Sweeter
Lincoln County Auditor
104 N. Main St.
Canton, SD 57013
auditor@lincolncountysd.org
(605) 764-2581 - voice

Ms. Lisa Schaeffbauer
Campbell County Auditor
PO Box 37
Mound City, SD 57646
campbellcommission@yahoo.com
(605) 955-3366 - voice

Ms. Karla Engle
Special Assistant Attorney General
South Dakota Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501-2586
karla.engle@state.sd.us
(605) 773-3262 - voice

Mr. Scott Pedersen
Chairman
Lake County
200 E. Center St.
Madison, SD 57042
lakegovt@lakecountysd.com
(605) 256-7600 - voice

Mr. Manuel J. de Castro, Jr.
Attorney
Lake County States Attorney
200 E. Center St.
Madison, SD 57042
lakesa2@lakecountysd.com
(605) 256-7630 - voice

General Manager
WEB Water Development Association, Inc.
PO Box 51
Aberdeen, SD 57402
office@webwater.org
(605) 229-4749 - voice

Mr. Randy Kuehn
17940 389th Ave.
Redfield, SD 57469
rlkfarms@gmail.com
(605) 472-1492 - voice

Mr. Jim Schmidt
Chairman
Lincoln County Board of Commissioners
104 N. Main, Ste. 110
Canton, SD 57013-1703
Auditor@lincolncountysd.org
(605) 764-2581

Mr. Michael F. Nadolski - Representing Lincoln County Board of Commissioners.
Attorney

016347

Lincoln County
Ste. 200
104 N. Main
Canton, SD 57077
mnadolski@lincolncountysd.org
(605) 764-5732 - voice
(605) 764-2931 - fax

Mr. Bret Merkle - Representing Pente Farms, LLC; KKKP Property, LLLP; Pederson Ag, LLC; Calvin Schreiber; DLK&M, LLC; Jean Osthus; and Daniel & Marcia Hoiland
Merkle Law Firm
PO Box 90708
Sioux Falls, SD 57109-0708
bret@merklelaw.com
(605) 339-1420 - voice

Ms. Cindy Heiberger
Commission Chairman
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
cjepsen@minnehahacounty.org
(605) 367-4220 - voice

Mr. Kersten Kappmeyer
Attorney
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
kkappmeyer@minnehahacounty.org
(605) 367-4226 - voice
(605) 367-4306 - fax

Mr. Glenn J. Boomsma - Representing: Peggy A. Hoogestraat, Kevin J. Schoffelman, Linda Goulet, Corlis Wiebers, Mavis Parry, Shirley Oltmanns, Janice E. Petterson, Marilyn Murray, Delores Andreessen Assid, Joy Hohn, and Orrin E. Geide
Attorney
Breit Law Office, P.C.
606 E. Tan Tara Circle
Sioux Falls, SD 57108
glenn@breitlawpc.com
(605) 336-8234 - voice
(605) 336-1123 - fax

Ms. Peggy A. Hoogestraat
27575 462nd Ave.
Chancellor, SD 57015
gardenga1peggy@gmail.com
(605) 647-5516 - voice

Ms. Joy A. Hohn
46178 263rd St.
Hartford, SD 57033
rjnchohn@gmail.com
(605) 212-9256 - voice

Ms. Marilyn J. Murray
1416 S. Larkspur Trl.
Sioux Falls, SD 57106
murrayma1@sio.midco.net
(605) 321-3633 - voice

Mr. Larry A. Nelson - Representing: City of Hartford
Frieberg, Nelson and Ask, L.L.P.
PO Box 38
Canton, SD 57013
lnelson@frieberglaw.com
(605) 987-2686 - voice

Ms. Teresa Sidel
City Administrator
City of Hartford
125 N. Main Ave.
Hartford, SD 57033
cityhall@hartfordsd.us
(605) 528-6187 - voice

Ms. Linda Glaeser
Manager
Rocky Acres Land Investment, LLC
27324 91st Ave. E.
Graham, WA 98338
lglaeser@seattlecca.org
lmglaeser@wwdb.org
(253) 670-1642 - voice

Ms. Linda Goulet
27332 Atkins Pl.
Tea, SD 57064
45Lgoulet@gmail.com
(605) 359-3822 - voice

Mr. Dale E. Sorenson
Dale E. Sorenson Life Estate
45064 241st St.
Madison, SD 57042
a77man@msn.com
(605) 480-1386 - voice

Ms. Kimberly Craven - Representing Dakota Rural Action and Indigenous Environmental Network
(IEN)
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com
(303) 494-1974 - voice

Ms. Sabrina King
Community Organizer
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabrina@dakotarural.org
(605) 716-2200 - voice

Mr. Frank James
Staff Director
Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org
(605) 697-5204 - voice
(605) 697-6230 - fax

Ms. Debra K., Mr. Duane H. & Mr. Dennis S. Sorenson
24095 451st Ave.
Madison, SD 57042
stubbyfarmer@yahoo.com
(605) 480-1370 - Debra Sorenson - voice
(605) 480-1162 - Duane Sorenson - voice
(605) 480-1055 - Dennis Sorenson - voice

Mr. Douglas Sorenson
24095 451st Ave.
Madison, SD 57042
plowboy@svtv.com
(605) 480-1385 - voice

Mr. William Haugen
Haugen Investments LP
PO Box 545
Hartford, SD 57033
wh401889@hotmail.com
(605) 359-9081 - voice

Mr. Phillip Fett
PO Box 572
Lennox, SD 57039
vonfett529@gmail.com
(605) 366-7155 - voice

Mr. Orrin E. Geide
46134 263rd St.
Hartford, SD 57033
(605) 261-4815 - voice

Ms. Shirley M. Oltmanns
26576 466th Ave.
Sioux Falls, SD 57106
ssoltm@gmail.com
(605) 941-0005 - voice

Mr. Bradley F. Williams
1044 Overlook Rd.
Mendota Heights, MN 55118
bwilliams@bestlaw.com
(612) 414-4950 - voice

Mr. Craig L. & Ms. Dotta-Jo A. Walker
733 NE 15th St.
Madison, SD 57042
court_walker@hotmail.com
(605) 256-0263 - voice

Mr. Kevin J. Schoffelman
712 W. Fourth Ave.
Lennox, SD 57039
klschoff@outlook.com
(605) 310-7062 - voice

Ms. Diane Best
Attorney
City of Sioux Falls
224 W. Ninth St.
Sioux Falls, SD 57117-7402

dbest@siouxfalls.org
(605) 367-8600 - voice

Mr. Charles J. Johnson
45169 243rd St.
Madison, SD 57042
c-bjohnson@svtv.com
(605) 270-2665 - voice

Ms. Janice E. Petterson
6401 S. Lyncrest Ave., Apt. 307
Sioux Falls, SD 57108
grmjarp@sio.midco.net
(605) 201-6897 - voice

Ms. Corliss F. Wiebers
607 S. Elm St.
PO Box 256
Lennox, SD 57039
wiebersco@gmail.com
(605) 647-2634 - voice

Mr. Paul A Nelsen
46248 W. Shore Pl.
Hartford, SD 57033
paul@paulnelsonconstruction.com
(605) 366-1116 - voice

Mr. Paul F. Seamans
27893 244th St.
Draper, SD 57531
jacknife@goldenwest.net
(605) 669-2777 - voice

Delores Andreessen Assid
c/o Laurie Kunzelman
3604 E. Woodsedge St.
Sioux Falls, SD 57108
(605) 321-5539 - voice

Mr. John Wellnitz
305 A St.
Osceola, SD 57353
johnwellnitz@gmail.com
(605) 350-5431 - voice

Mr. John Stratmeyer
46534 272nd St.
Tea, SD 57064
(605) 261-5572 - voice

Mr. Lorin L. Brass
46652 278th St.
Lennox, SD 57039
brass@iw.net
(605) 759-5547 - voice

Mr. Tom Goldtooth
Executive Director
Indigenous Environmental Network
ien@igc.org

Mr. Dallas Goldtooth
Community Organizer
Indigenous Environmental Network
goldtoothdallas@gmail.com

Mr. Matthew L. Rappold - Representing: RST-Sicangu Oyate Land Office
and RST- Sicangu Lakota Treaty Office
Rappold Law Office
816 Sixth St.
PO Box 873
Rapid City, SD 57709
Matt.rappold01@gmail.com
(605) 828-1680 - voice

Ms. Paula Antoine
RST-Sicangu Oyate Land Office
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
(605) 747-4225 - voice

Mr. Royal Yellow Hawk
RST- Sicangu Lakota Treaty Office
PO Box 430
Rosebud, SD 57570
yellowhawkroyal@yahoo.com
(605) 856-2998 - voice

Ms. Thomasina Real Bird - Representing - Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
trealbird@ndnlaw.com
(303) 673-9600 - voice

Ms. Jennifer S. Baker – Representing Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
Jbaker@ndnlaw.com
303-673-9600 - voice
303-673-9155 – fax

Ms. Mavis A. Parry
3 Mission Mtn. Rd.
Clancy, MT 59634
mavisparry@hotmail.com
(406) 461-2163 - voice

Ms. Margo D. Northrup - Representing: South Dakota Association of Rural Water Systems, Inc.
Attorney
Riter, Rogers, Wattier & Northrup LLP
PO Box 280
Pierre, SD 57501-0280
m.northrup@riterlaw.com
(605) 224-5825 - voice