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Attachment 1: Status of Easement Acquisitions from Landowner Intervenors in this Case as of August 12, 2015

Attachment 2: Dakota Access’ Response to Tripp Exhibits (to be considered if the Tripp Exhibits are admitted into evidence or a reply brief is filed by Ms. Tripp making arguments based on her evidence)

I. Introduction and Procedural History

Pursuant to the procedural schedule established in this docket, Dakota Access, LLC (“Dakota Access”) submits this Reply Brief. Dakota Access is addressing topics in the following sections of the agreed outline for briefs in response to the initial briefs of other parties:

- V. Public Need/Public Convenience and Necessity (Response to Staff)
- VI. Proposed Route of the Pipeline and Requested Easement Widths (Response to Staff)
- VII. Section 8-503 of the Public Utilities Act (Response to Illinois Agricultural Association (“IAA”) and SP Group (“SP”))
- VIII. Section 8-509 of the Public Utilities Act – Eminent Domain (Response to IAA and SP)

In addition, Attachment 2 to this Reply Brief, under the headings §IV – Fit, Willing and Able and §V – Public Need/Public Convenience and Necessity, provides Dakota Access’ response to the exhibits submitted by Tabitha Tripp. On the afternoon of October 14, 2015, the Administrative Law Judge (“ALJ”) issued a ruling denying Ms. Tripp’s October 8, 2015 motion to admit her exhibits into the record. Also on October 14, Ms. Tripp filed a pleading stating that she planned to file a reply brief in this docket on October 15. (Ms. Tripp did not file an initial brief.) In light of the fact that this proceeding has an approaching statutory deadline of December 22, 2015, Dakota Access has included Attachment 2, which can be considered by the ALJ and the Commission in the event that the Tripp exhibits are subsequently admitted into the record or a reply brief is filed by Ms. Tripp making arguments based on her evidence.

V. Public Need/Public Convenience and Necessity (Response to Staff)

Staff states that it believes it would be appropriate for the Commission to condition its approval of the Dakota Access Pipeline (“Pipeline” or “Project”) on Energy Transfer Crude Oil Company, LLC (“ETCO”) also obtaining a certificate in good standing for its proposed pipeline in Docket 14-0755. Staff Initial Brief (“IB”) at 15-16. Dakota Access agrees with Staff that this proposal is likely to become moot, in light of the relative status of the ETCO Pipeline case in

Docket 14-0755. As Staff correctly describes, Staff recommended in Docket 14-0755 that ETCO be granted a certificate in good standing and eminent domain authority, no party opposed ETCO's requests or Staff's recommendation, and the parties filed a joint proposed order on September 29, 2015. Staff IB at 16. Therefore, it would appear that a final order will be issued in Docket 14-0755 prior to an order being issued in this docket.

Additionally, the record in this case shows that the public need for and public convenience and necessity promoted by the Dakota Access Pipeline is not tied entirely to the ETCO Pipeline. While the construction of the Dakota Access Pipeline in conjunction with the ETCO Pipeline provides shippers the opportunity for continuous transportation of crude oil from the Bakken/Three Forks production area in North Dakota to the refinery complexes in the Gulf Coast, crude oil delivered by the Dakota Access Pipeline to the Patoka, Illinois, Hub can also be offloaded at Patoka and shipped, via other pipelines originating at or passing through the Patoka Hub, to various refineries in Illinois and other Midwestern states. Midwestern refineries that can be served in this manner by crude oil delivered from North Dakota to Patoka via the Dakota Access Pipeline include the WRB Refining Wood River Refinery in Roxana, Illinois; the CITGO Lemont Refinery in Lemont, Illinois; the ExxonMobil Joliet Refinery in Channahon, Illinois; the BP Whiting Refinery in Whiting, Indiana; the Marathon Petroleum Refinery in Robinson, Illinois; the Husky Energy Lima Refinery in Lima, Ohio; and the Marathon Canton Refinery in Canton, Ohio. Dakota Access IB at 25. Thus, in addition to providing one leg of continuous pipeline transportation of crude oil from the Bakken/Three Forks production area to the Gulf Coast refining complex, the Dakota Access Pipeline will also promote the public convenience and necessity by enhancing the reliability of the pipeline network that supplies crude oil into Illinois and the Midwest, and enhancing the supply options and supply diversity of these Illinois and Midwestern refineries. Dakota Access Ex. 3.0 at 9; Dakota Access Ex. 3.8 at 7.

VI. Proposed Route of the Pipeline and Required Easement Widths (Response to Staff)

As noted at page 47 of Dakota Access' Initial Brief and pages 18-19 of Staff's Initial Brief, only one objection to the proposed route of the Dakota Access Pipeline was identified on the record. This was the objection of Oelze Equipment Company ("Oelze") to the original proposed route of the Pipeline across its property located in the Patoka Hub area. As Staff notes, no other party challenged the route proposed by Dakota Access for the Pipeline, or proposed an alternate route. Staff IB at 18.

Dakota Access anticipates arriving at a mutually satisfactory placement of the Pipeline on Oelze's property, based on discussions with the landowner. Dakota Access Ex. 2.20 at 2. Staff states that if there is no agreement, the Commission should adopt Oelze's proposed re-route. Staff IB at 19. However, Staff also states (per Mr. Maple's testimony) that the Commission should choose the route that has the smallest impact on adjacent landowners. Staff IB at 19. In this regard, Dakota Access points out that Oelze's proposed re-route requires that the Pipeline cross the properties of five nearby landowners. The properties of four of these nearby landowners would also be crossed by Dakota Access' original proposed route, but at different locations on their properties than originally proposed by Dakota Access. The fifth nearby property crossed by Oelze's proposed reroute is a new landowner whose property is not crossed by Dakota Access' original proposed route. Dakota Access Ex. 2.17 at 7.

In contrast, Dakota Access' proposed reroute (developed in response to Oelze's concern) relocates the route of the Pipeline across Oelze's property so that it parallels existing pipelines of Marathon Petroleum that already cross the Oelze property. Dakota Access Ex. 2.17 at 7; Dakota Access Ex. 2.18 Rev. As can be seen on Dakota Access Ex. 2.18 Rev., Dakota Access' proposed reroute enters the Oelze property at the location of existing storage tanks on the property (a segment of the property that is bisected by the Marathon Petroleum pipeline), then turns to parallel the existing Marathon Petroleum pipeline for the remainder of the Dakota Access

Pipeline's crossing of the Oelze property, leaving the vast majority of the Oelze property unaffected. Thus, the Dakota Access reroute minimizes incremental impacts to the Oelze property, while impacting one less landowner than Oelze's proposed reroute. Dakota Access 2.17 at 7. The Dakota Access reroute takes advantage of, and parallels, existing pipeline infrastructure, which is considered a desirable routing attribute. Dakota Access Ex. 2.7 at 7-8; Dakota Access IB at 41, 42.

Additionally, Oelze's concern about the original proposed placement of the Dakota Access Pipeline on its property and the potential impact on development of the property was based on an assumption that the Pipeline would require a setback of 175 feet on either side of the Pipeline easement (*i.e.*, with the requested 50 foot wide easement considered, a total of 200 feet on either side of the centerline). Dakota Access Ex. 2.17 at 5. However, Oelze later acknowledged, and Mr. Broad, the Project Manager for the Dakota Access Project, confirmed, that such a large setback was not required by any local, State or federal laws or regulations. *Id.* Mr. Broad explained that no additional setback would be required beyond Dakota Access' requested 50 foot wide easement. He also explained that the Pipeline can be installed at a depth that will minimize any interference with installation of any other new facilities on the Oelze property. *Id.* at 6. In any event, Dakota Access' proposed reroute to closely parallel the two existing Marathon pipelines on the Oelze property uses the portion of the property that is already impacted by existing pipeline infrastructure and thereby minimizes any incremental impacts.¹

VII. Section 8-503 of the Public Utilities Act (Response to IAA and SP)

IAA and SP state that they take no direct position on whether the Commission should grant a certificate to Dakota Access under §15-401 of the Common Carrier by Pipeline Law

¹ Oelze indicated that its property was purchased for development or resale purposes in anticipation that new storage or terminal facilities could be constructed on the property as the Patoka Hub expands. Dakota Access Ex. 2.17 at 5. It is ironic that Oelze now objects to the placement on its property of a significant new Pipeline that is likely to be one of the primary factors in Oelze's speculative commercial expectations being realized.

(“CCPL”) and §8-503 of the Public Utilities Act (“Act”), but that if the Commission grants this relief, “Dakota Access should be held to the terms of the Agricultural Impact Mitigation Agreement [“AIMA”] and condition the certificate upon compliance with the AIMA.” IAA-SP IB at 4, citing *Rock Island Clean Line LLC*, Docket 12-0560 (Nov. 25, 2014), at 201-205.

By its terms, the AIMA will be incorporated by reference into all easement agreements that Dakota Access enters into for the Pipeline in Illinois. Dakota Access Ex. 5.0 at 4-5; Dakota Access Ex. 2.19 (the AIMA) at 4. In the referenced *Rock Island* order, the Commission specifically directed the applicant to comply with the provisions of its AIMA regarding mitigation and remediation of soil compaction, avoidance and remediation of impacts to drainage tiles, and use of guy wires (the latter provision is only applicable to electric transmission lines, not to underground pipelines). Order in Docket 12-0560 at 203-204. Dakota Access does not object to there being a similar statement or statements in the Order in this case directing Dakota Access to comply with provisions of its AIMA that are intended to avoid, mitigate and remediate impacts of construction activities on agricultural properties.

VIII. Section 8-509 of the Public Utilities Act - Eminent Domain (Response to IAA-SP)

IAA and SP argue that in its Order in this proceeding, the Commission should not grant Dakota Access authority to use eminent domain pursuant to §8-509 of the Act, but rather should require Dakota Access to initiate a separate proceeding at a future date for eminent domain authority. IAA and SP argue that Dakota Access should be required to request eminent domain authority in a separate proceeding to be filed after it obtains its certificate in good standing, the way electric utilities purportedly approach eminent domain for transmission lines; that Dakota Access has not demonstrated that eminent domain is necessary at this point in time; and that Dakota Access would not be “unduly prejudiced” by having to file and prosecute a separate proceeding for eminent domain authority. IAA-SP IB at 5-12.

IAA’s and SP’s argument should be rejected. As requested by Dakota Access,

recommended by Staff (Staff IB at 20-24), and supported by the record, the Order in this docket should grant Dakota Access authority to use eminent domain to acquire the necessary easements on those parcels for which it has been unable to acquire easements through negotiations and voluntary agreements with landowners. IAA-SP's reliance on the way electric utilities purportedly do things is factually inaccurate and misplaced. Further, the record shows that Dakota Access has expended significant efforts over approximately the past 12 months engaging in good faith outreach to and negotiations with landowners, with notable success. Finally, not only Dakota Access, but also the public convenience and necessity – including the interests of Illinois farmers – would be adversely impacted if IAA's and SP's position were adopted.

As pointed out in Dakota Access' Initial Brief, only one witness testified that eminent domain should not be granted in this proceeding, and that Dakota Access should be required to initiate a separate proceeding to request eminent domain authority. That witness, William Klingele, does not own property that will be crossed by the route of the Pipeline, and his principal reason for his position was that he would not want to expend time and effort, and retain an attorney, to negotiate an easement until a certificate is granted and a route is approved.² Dakota Access IB at 55; IAA-SP IB at 7. No landowner whose property is located on the proposed route and from whom Dakota Access is seeking an easement testified that eminent domain authority should not be granted in this proceeding. In fact, as of August 12, 2015, Dakota Access has entered into easement agreements with the owners of 33 of the 55 parcels crossed by the proposed Pipeline Route that are owned by landowners who intervened in this case.³ Further, while the IAA presented no witnesses and presented nothing to demonstrate that

² Mr. Klingele's concerns about not wanting to spend time or money on negotiating ring hollow. To make his point, even though his property is not on the route, he retained an attorney to intervene in this case, prepared and filed two pieces of testimony, and presumably was aware he could be called to Springfield to be cross-examined.

³ See Attachment 1 to this Reply Brief, which is a list (based on Dakota Access Ex. 5.10) of the easement acquisition status for parcels owned by landowner intervenors that are crossed by the Pipeline route. As shown on Attachment 1, 8 of the remaining 22 parcels are owned by the same related group of

it is authorized to speak on behalf of any landowners located on the route of the Pipeline, farmers and other representatives of agricultural interests submitted testimony strongly endorsing the construction of the Pipeline.

A. IAA-SP's Analogy to How Electric Utilities Approach Eminent Domain Requests for New Transmission Lines is Factually Inaccurate and Inapposite to this Case

IAA and SP assert that requiring Dakota Access to file a separate proceeding to request eminent domain authority “would be consistent with all recent Commission orders in electric utility transmission line dockets.” IAA-SP IB at 11-12. IAA and SP are incorrect. First, on September 16, 2015, the Commission issued its order in *MidAmerican Energy Company*, Docket 14-0494, granting in that order (as requested by the applicant, MidAmerican) a certificate of public convenience and necessity (“CPCN”) for a new electric transmission line under §8-406 of the Act, authority to construct the line pursuant to §8-503 of the Act, and authority pursuant to §8-509 to use eminent domain to acquire the remaining easements that the utility had not yet acquired. Further, IAA and SP have not cited any recent electric utility transmission line cases in which the Commission denied a request from an electric utility to grant it a CPCN and eminent domain authority in the same proceeding.⁴

More generally, IAA and SP assert that electric utilities often request a CPCN in one proceeding and eminent domain authority pursuant to §8-509 in a subsequent proceeding, and that this is a better approach, which the Commission should apply to pipeline certificate cases. IAA-SP IB at 7-8, 12. Dakota Access acknowledge that an electric utility may elect to request a CPCN for a transmission line in one proceeding and to return to the Commission at a later date to

landowners. The landowner intervenors who have signed easement agreements include all of the “HAPO” landowners (*see* IAA-SP IB at 10) save one whose property is not on the route, and all of the “MCPO” landowners with properties on the route. In total, the properties of 11 landowner intervenors are not crossed by the Pipeline route. *See* Attachment 1.

⁴ IAA-SP cite the Commission’s orders in Dockets 07-0532 and 06-0706. However, in Docket 07-0532, the applicant electric utility made it abundantly clear that it was not requesting eminent domain authority in that case. *Central Ill. Public Serv. Co.*, Docket 07-0532 (May 6, 2009), at 7-8, 13. The same is true of Docket 06-0706. *Illinois Power Co. d/b/a AmerenIP*, Docket 06-0706 (Mar. 11, 2009), at 82.

request eminent domain authority. However, this is a matter of choice for the applicant electric utility, and not a practice that the Commission should, or has the authority to, impose on common carrier pipelines under the CCPL.

Further, there are significant differences in this respect between the statutory provisions applicable to new electric transmission lines and the statutory provisions applicable to common carrier pipelines. Since 2010, electric utilities seeking a CPCN and §8-503 authority to construct a new transmission line have available to them §8-406.1, which requires that the Commission's order be granted within 150 days after the application is filed, or 225 days if the Commission approves a 75-day extension. Section 8-509, also as amended in 2010, then provides that if an electric utility seeks eminent domain authority for a new transmission line after receiving a CPCN under §8-406.1, the Commission must act on the request for eminent domain authority within 45 days. Thus, while an electric utility may request a CPCN for a new transmission line and eminent domain authority for the line in separate proceedings, it is assured that the two Commission proceedings will take (at most) a total of 270 days.⁵ In contrast, a common carrier pipeline certificate in good standing proceeding under CCPL §15-401 has a 12-month time limit for entry of the order (which may be extended by the Commission for up to 6 months on specific grounds stated in the statute). If the pipeline were to seek eminent domain authority in a separate proceeding, rather than in its §15-401 certificate application, there is *no* statutory deadline for the Commission's order in the separate eminent domain proceeding (as contrasted to the 45-day deadline in an eminent domain proceeding for an electric transmission line for which a CPCN has been granted pursuant to §8-406.1).

Not surprisingly, therefore, most of the recent applications filed by electric utilities for eminent domain authority have been follow-on cases to §8-406.1 CPCN cases.

⁵ It should not be surprising that an electric utility would decide not to complicate its §8-406.1 case, which must be completed in 225 days or less, with a request for eminent domain authority, knowing that it can request eminent domain authority in a separate filing and receive an order in 45 days.

- *Ameren Transmission Co. of Illinois*, Docket 14-0551 (Dec. 10, 2014) – Eminent domain authority granted for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 12-0598.
- *Ameren Transmission Co. of Illinois*, Docket 14-0380 (June 26, 2014) – Eminent domain authority granted for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 12-0598.
- *Ameren Transmission Co. of Illinois*, Docket 14-0291 (May 20, 2014) – Eminent domain authority granted for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 12-0598.
- *Ameren Illinois Co.*, Docket 13-0516 (Oct. 23, 2013) – Eminent domain authority granted for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 12-0154.
- *Ameren Illinois Co.*, Docket 13-0456 (Sept. 10, 2013) – Eminent domain authority granted for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 12-0080.
- In addition, on September 29, 2015, Commonwealth Edison Company filed a request for eminent domain authority in Docket 15-0545 for a transmission line for which a CPCN was granted pursuant to §8-406.1 in Docket 13-0657.
- In addition, as noted earlier, on September 16, 2015, in Docket 14-0494, the Commission granted, in the same order, a CPCN, §8-503 authority, and §8-509 eminent domain authority to MidAmerican for a new electric transmission line.

In contrast, there is a history of pipelines requesting and being granted a certificate in good standing pursuant to §15-401 of the CCPL, §8-503 authority to construct the pipeline, and eminent domain authority pursuant to §8-509 of the Act, all in the same proceeding:

- *Explorer Pipeline Co.*, Docket 13-0433 (April 16, 2014).
- *Enbridge Energy, Limited Partnership*, Docket 13-0134 (April 29, 2014).
- *Enbridge Pipelines (FSP), L.L.C.*, Docket 12-0347 (Feb. 14, 2013).
- *Enbridge Energy Partners, L.P. and Enbridge Energy, Limited Partnership*, Docket 06-0470 (April 4, 2007).
- *TransCanada Keystone Pipeline, LP*, Docket 06-0458 (April 4, 2007).

IAA and SP cite *Enbridge Pipelines (Illinois), L.L.C.*, Docket 07-0446 (July 8, 2009), in which the Commission, at the conclusion of a proceeding that took almost two years to complete, granted a certificate for a common carrier pipeline but declined to grant eminent domain

authority, specifying that the applicant should return to the Commission at a later date if it sought eminent domain authority. IAA-SP IB at 9. As the list above shows, the outcome in Docket 07-0446 is an aberration among pipeline certificate and eminent domain cases. Further, as described in Dakota Access' Initial Brief and as testified to by Staff witness Mr. Maple, there were unique circumstances in the *Enbridge* case, Docket 07-0446, that are not present in the instant case. See Dakota Access IB at 59-61. Moreover, following issuance of the *Enbridge* order in Docket 07-0446, the General Assembly enacted significant amendments to §15-401 of the CCPL, in Public Act 97-405, effective August 16, 2011.⁶ Public Act 97-405 added new subsections (d) and (e) to §15-401 of the CCPL; these subsections provide in pertinent part (emphasis added):

(d) A common carrier by pipeline may request any other approvals as may be needed from the Commission for completion of the pipeline under Article VIII or any other Article or Section of this Act at the same time, and as part of the same application, as its request for a certificate of good standing under this Section. The Commission's rules shall ensure that notice of such a consolidated application is provided within 30 days after filing to the landowners along a proposed project route, or to the potentially affected landowners within a proposed project route width, using the notification procedures set forth in the Commission's rules. If a consolidated application is submitted, then the requests shall be heard on a consolidated basis and a decision on all issues shall be entered within the time frames stated in subsection (e) of this Section. . . .

(e) The Commission shall make its determination on any application filed pursuant to this Section and issue its final order within one year after the date that the application is filed unless an extension is granted as provided in this subsection (e). The Commission may extend the one-year time period for issuing a final order on an application filed pursuant to this Section up to an additional 6 months if it finds, following the filing of initial testimony by the parties to the proceeding, that due to the number of affected landowners and other parties in the proceeding and the complexity of the contested issues before it, additional time is needed to ensure a complete review of the evidence. . . .

Thus, §15-401(d), as added to the CCPL following the Commission's order in Docket 07-

⁶ Dakota Access believes that Public Act 97-405, which was introduced in the General Assembly as House Bill 1703 on February 16, 2011, and passed both Houses on May 20, 2011, was introduced and enacted specifically in response to and reaction to the Order in Docket 07-0446. For example, P.A. 97-0405 amended §15-401(b) to provide that the Commission can consider, in determining whether a proposed pipeline will promote the public convenience and necessity, some of the types of evidence that the Commission relied on in Docket 07-0446 in determining that there was a public need for the proposed Enbridge pipeline; P.A. 97-0405 stated that "[t]he changes in this subsection (b) are intended to be confirmatory of existing law."

0446, requires the Commission to rule on both a request for a certificate in good standing for a common carrier pipeline, and a request for eminent domain authority under §8-509 (if requested), in the same order, within 12 months of the date the application was filed. Section 15-401(d) does not require the Commission to grant the request for eminent domain authority in the same proceeding as the CPCN – that determination must be based on the record – but it does require the Commission to consider and act on the request for eminent domain authority in the same proceeding and order in which it grants the certificate in good standing. These 2011 amendments to §15-401(d) and (e) preclude the Commission from deciding, as a matter of policy or practice, that it will not grant eminent domain authority for a pipeline in the same proceeding in which it grants a certificate in good standing.

B. The Record Supports Granting Eminent Domain Authority in the Commission’s Certificate Order in this Proceeding

IAA and SP raise a number of questions concerning Dakota Access’ negotiations with landowners, asserting, for example, that “we don’t know” if Dakota Access’ land agents explained the easement document to landowners; or how many times the land agents met with landowners to discuss easement terms;⁷ or whether the land agents explained the compensation offers for the easement to the landowners;⁸ or whether the landowners were presented with an appraisal;⁹ or if there were counter-offers made; or whether comparable offers are being made to

⁷ Dakota Access Ex. 5.10, as well as Dakota Access’ monthly updates to its response to Staff Data Request ENG 1.21, show the number of meetings and other contacts that Dakota Access’ representatives have had with the owner(s) of each parcel that is crossed by the route and on which Dakota Access is seeking an easement.

⁸ The offer to purchase the easement for \$X dollars per acre times the number of acres in the easement area being sought is a straightforward calculation that would not seem to require much explanation.

⁹ Dakota Access is not aware of any requirement that a pipeline or utility prepare individual appraisals of each property on which it seeks an easement in order to negotiate easement agreements, and IAA-SP have not cited any such requirement. For purposes of determining the market value on which to base its easement compensation offers, Dakota Access has not performed individual appraisals of each property, but has based its offers on market values determined in a market study of land sales transactions in the relevant counties prepared by a third-party real estate appraisal firm. Dakota Access IB at 53-54. Dakota Access believes this approach is common practice. Landowners, of course, are not bound by the fair market value on which Dakota Access bases its offers, but are free to negotiate the price of the easement

similarly situated landowners; or whether Dakota Access is responding to landowners' concerns. IAA-SP IB at 10. Most of these questions are in fact answered in the record, in a manner that demonstrates Dakota Access is negotiating in good faith with landowners. However, one fact answers all of IAA-SP's questions: as IAA and SP acknowledge in their Initial Brief (at 11), as of September 29, 2015, the owners of more than 600 of the 859 parcels crossed by the Pipeline route in Illinois have signed easement agreements. Six hundred-plus landowners would not have all signed easement agreements if they did not understand the easement document or had disagreements with it, or did not understand the compensation offer, or disputed the basis of the offer (*i.e.*, the fair market value determined for the property), or had made counter-offers that were ignored, or had other questions and concerns about the easement document, or the location of the easement on their properties, or the compensation offer (including the compensation to be paid for crop losses and other damages) that had not been answered to their satisfaction.¹⁰

Further, what the record shows, through the testimony of Dakota Access and Staff witnesses, is:

- All offers to landowners are made in writing, with appropriate legal descriptions and property sketches identifying the extent and placement of the pipeline and temporary workspace easements on the property. Dakota Access Ex. 5.0 at 8.
- The land agents are both trained and tasked to negotiate fully and fairly with landowners, preferably via face-to-face contact as much and as often as necessary to reach accord. Dakota Access Ex. 5.0 at 8. This training promotes good-faith negotiations, including the presentation of bona fide offers, and responsiveness with a sense of urgency to concerns expressed by the landowners.
- All offers are made on the basis of 100% of fair market value for the fee interest in the easement area, as determined by a market study of land values in the counties through which the Pipeline will pass, conducted by a real estate appraisal firm, and

including the underlying fair market values. *See* 83 Ill. Admin. Code §300 App. A (“The price and other terms for the land or land rights is a matter of negotiation between each landowner and a company”).

¹⁰ IAA and SP state, accurately, that as of September 29, the owners of 604 of the 859 parcels to be crossed by the Pipeline route in Illinois have signed easement agreements. This data is taken from Dakota Access' September 29, 2015 monthly update to Staff Data Request ENG 1.21, which is not in the record. Dakota Access does not object to IAA-SP citing this data. However, since the record has not been marked Heard and Taken, if the ALJ or the Commission requests, Dakota Access can file the September 29 response update (as well as future updates) for the record in this docket.

using the market value for land that is “90% Tillable & Greater” with a productivity index of good to excellent. Dakota Access Ex. 5.0 at 9; Staff Ex. 1.0 at 21-22.

- Additionally, 50% of fair market value is being offered for temporary workspace easements. Dakota Access Ex. 5.0 at 9.
- Additionally, Dakota Access is offering to compensate landowners fully for any non-restorable incidental damages, such as loss of marketable trees and crop losses; and to restore any areas affected by construction to reflect its pre-existing status as fully as possible, including through the procedures specified in the AIMA. Dakota Access Ex. 5.0 at 10.
- As of the date of this brief, Dakota Access has been contacting landowners to negotiate the acquisition of easements in Illinois for over ten months. Dakota Access Ex. 2.0 at 9; Dakota Access Ex. 5.0 at 10.
- As of August 12, 2015 (the date of the last complete report placed into the record in accordance with the procedural schedule), Dakota Access had at least one in-person meeting with the owners of all but 38 of 858 parcels crossed by the route (but the owners of 13 of those 38 parcels have signed easement agreements without the need for an in-person meeting). Dakota Access Ex. 5.9 at 2. Dakota Access Ex. 5.10 lists the dates and types (*e.g.*, meeting, phone call) of the numerous contacts that Dakota Access has had, as of August 12, with the owner of each of the 858 parcels.
- In addition to the information provided directly to landowners in the course of easement negotiations and in the mailings required by 83 Ill. Admin. Code §300.30, Dakota Access has made extensive information about the Project available to landowners through other informational mailings and by holding open houses. Dakota Access Ex. 5.0 at 5-6, 7-8; Dakota Access Exs. 5.2, 5.5.
- As of August 12, 2015, Dakota Access had either entered into an easement agreement with, or had made an offer which was outstanding to, the owners of 846 of the 858 parcels crossed by the route. Dakota Access Ex. 5.9 at 2.
- Dakota Access considers and studies any reroute suggestions it receives, and adjusts right-of-way locations and installations when possible to accommodate landowner interests and concerns. Dakota Access Ex. 5.0 at 8; Dakota Access Ex. 2.7 at 14-15. As shown on Dakota Access Exhibits 2.13, 2.16 and 2.22, Dakota Access has made numerous revisions to the Pipeline route in Illinois to accommodate landowner requests or concerns or to address parcel-specific information obtained in discussions with landowners.
- Staff witness Mr. Maple testified that whereas in connection with other projects he has sometimes received numerous phone calls from landowners, in the case of this Project he has received very few phone calls and none of them made any serious allegations about Dakota Access negotiating in bad faith. Tr. 101-102.

Although there were some 70 landowner intervenors (some of them co-owners of a

property) in this case,¹¹ and although IAA states that it has over 80,000 farmer members (IAA Petition to Intervene, ¶3), there was no landowner testimony disputing any of the above evidence, or contending that Dakota Access is not explaining its easement agreement or compensation offer, is not negotiating in good faith with landowners, or is not answering their questions or being responsive to their concerns. Nor was there any testimony contending that Dakota Access' compensation offer was inadequate, incomplete, or inconsistent with normal practice. Additionally, Dakota Access submitted its proposed form of easement agreement as an exhibit to its direct testimony (Dakota Access Ex. 5.1), and (unlike other certificate cases), there was no testimony or cross-examination taking issue with provisions of the easement agreement.

The overriding questions in determining whether to grant eminent domain authority is whether Dakota Access has engaged in reasonable efforts to acquire the necessary easements through negotiations and voluntary agreements; and whether Dakota Access has engaged in good-faith negotiations with landowners to acquire the easements. The evidence shows that the answer to both questions, without contradiction in the record, is “yes.”

Moreover, Dakota Access' percentages of easements acquired, offers made, and contacts with landowners are comparable to or greater than those in other cases in which the Commission has granted both a certificate in good standing and eminent domain authority for the construction of a new common carrier pipeline. For example, in *TransCanada Keystone Pipeline, LP*, Docket 06-0458 (April 4, 2007), the applicant had contacted the owners of 219 of the 236 tracts crossed by the route, had made offers for easements to the owners of 168 of the tracts, and had obtained 35 easement agreements. *Id.* at 22. In *Explorer Pipeline Co.*, Docket 13-0433 (April 16, 2014), the applicant had acquired 35% of the required easements, and had engaged in somewhat more than 700 contacts, including more than 100 face-to-face meetings, with the 54 landowners on the route. *Id.* at 27. In this case, as of September 29, 2015, Dakota Access had acquired easements

¹¹ It turned out that the properties of some of the landowner intervenors, such as Mr. Klingele, are not located on the proposed route of the Pipeline. See Attachment 1 to this Reply Brief.

on 604 of 859 parcels, was engaged in negotiations with the owners of an additional 249 of the 859 parcels, and there was only 1 landowner to whom Dakota Access had not made an offer.¹² See IAA-SP IB at 11.

In summary, the record shows that based on the criteria the Commission has previously applied, Dakota Access has engaged in reasonable efforts to acquire the necessary easements through further negotiations and voluntary agreements with landowners; and has engaged in good-faith negotiations with landowners to acquire easements, and therefore should be granted authority pursuant to §8-509 to utilize eminent domain to acquire easements that it is unable to acquire through negotiations and voluntary agreements with landowners. This conclusion is thoroughly supported in the record, both by the evidence presented by Dakota Access and by the testimony and recommendation of Staff. Staff Ex. 1.0 at 15-16, 19-23; Staff IB at 20-24.

C. The Public Need for the Pipeline and the Public Convenience and Necessity it Will Promote Strongly Support Granting Eminent Domain Authority in this Order

IAA and SP argue that Dakota Access should be required to continue negotiating with landowners to acquire the remaining approximately 250 easements, then return to the Commission at a later date to file an application pursuant to §8-509 for eminent domain authority to acquire the remaining easements. IAA-SP IB at 11. However, it is undisputed that this outcome would significantly delay the construction and operation of a Pipeline Project for which, the record clearly shows, there is a strong, current public need, and that will promote the public convenience and necessity. The public need for the Project supports the need to grant eminent domain authority in the Commission's order in this docket. Moreover, while IAA and SP

¹² IAA and SP assert that there is no evidence to support the assertion that there are landowners who are not willing to negotiate in good faith. IAA-SP IB at 11. IAA-SP are referring to a data request response that is not in the record (*see* footnote 10 above), so their statement is a tautology. However, Dakota Access Ex. 5.10, sponsored by Dakota Access witness Bryan McGregor, states that as of August 12, 2015, there were 8 landowners whose responses to Dakota Access indicate the landowners are unwilling to negotiate in good faith for easement agreements on reasonable terms. (The particular landowners are identified in the exhibit.) This is sworn testimony in the record that was not rebutted or cross-examined.

contend Dakota Access would not be unduly prejudiced by the delay they advocate, the record shows that not only Dakota Access, but the public, would be prejudiced by the delay that IAA and SP advocate.

Should Dakota Access be required to return to the Commission to initiate a second proceeding to obtain eminent domain authority, there would be no statutory time limit on that proceeding. Even a reasonably expeditious proceeding under §8-509 could be expected to take 6 months or longer from filing to Commission order. Thus, even if Dakota Access were to continue negotiating with landowners for only 3 or 4 months after the Commission's Order in this docket, before initiating a separate proceeding under §8-509, the overall delay could easily be 9 to 12 months, or longer.

IAA and SP argue that granting eminent domain authority in the Order in this case would “force” landowners to enter into easement agreement, whereas withholding eminent domain authority would “foster a more level playing field.” IAA-SP IB at 11. These arguments are misplaced. A grant of eminent domain authority in the Order in this docket will not cause Dakota Access to stop negotiating in good faith; to the contrary, Dakota Access fully intends to continue engaging in good-faith negotiations with the remaining landowners (assuming they reciprocate). Certainly, Dakota Access is not going to file some 250 condemnation actions in circuit courts; such an effort would be unmanageable. As Dakota Access' witness testified, Dakota Access does not want to file condemnation actions, except as a last resort, because they are costly, inefficient, and can delay a project. Dakota Access Ex. 1.0R at 10-11. A “level playing field” will continue to exist because Dakota Access has strong incentives not to resort to condemnation actions. The imperative to complete the acquisition of easements, avoid time-consuming condemnation litigation, and proceed to construction in order to meet its commercial obligations and the demands of shippers, will compel Dakota Access to continue its exhaustive efforts to negotiate in good faith to acquire the remaining easements through negotiations and

voluntary agreements. Dakota Access Ex. 1.0R at 11-12; *see* Dakota Access IB at 61.

IAA and SP miss the main purpose of receiving eminent domain authority, which is to give Dakota Access the knowledge that it will be legally entitled to acquire all the easements needed for the Pipeline in Illinois. Without this assurance, Dakota Access does not know that it can acquire all the necessary easements. Therefore, it cannot commence construction of the Project. Without eminent domain authority, Dakota Access does not know if it will be able to build the Pipeline on the route the Commission has approved, because if a “holdout” landowner refuses to grant an easement, Dakota Access will need to change the route so as to not cross that landowner’s property.¹³ More importantly, until it knows it has legal authority to acquire all the easements needed, Dakota Access cannot start constructing the Project. It would be imprudent, and tie-up and potentially waste capital resources, for Dakota Access (or any pipeline) to start construction on those properties on which it holds easements, without knowing that it will be legally entitled to acquire the remaining easements needed along the entire route. Similarly, it would be imprudent and wasteful for Dakota Access to begin expending capital to construct the Pipeline on those properties on which it holds easements, knowing that it will likely need to return to the Commission for a second lengthy proceeding to obtain eminent domain authority to acquire the remaining easements before it can complete the Project. Dakota Access Ex. 2.20 at 3.

The delay advocated by IAA and SP would harm not only Dakota Access in the pursuit and achievement of its commercial objectives, but would also harm the public convenience and necessity. The record shows there is a strong commercial demand for the Dakota Access Pipeline to be constructed and placed into operation. There is currently insufficient outbound pipeline capacity to transport the substantial amounts of crude oil being produced in the Bakken/Three Forks production area; reflecting this, shippers have already entered into long-

¹³ The necessary route change to avoid the holdout landowner’s property could potentially require revisions to the route for many miles on either side of that landowner’s property. This could not only result in a less than optimal route, but also impact numerous other landowners and properties. Dakota Access Ex. 1.0R at 11-12; Staff Ex. 1.0 at 24.

term contracts to fully subscribe the available capacity of the Pipeline. *See* Dakota Access IB at 21-24. Further, the benefits of the Pipeline to the Illinois, Midwestern, and U.S. economies, in terms of increasing the supplies of domestically-produced crude oil available to refineries in Illinois, the Midwest and the Gulf Coast, reducing reliance on foreign crude oil supplies, increasing the reliability and diversity of the pipeline transportation network, and supporting the production of, and the stability of the prices of, the refined petroleum products on which the Illinois and U.S. economies depend, is well established and not controverted in the evidentiary record. *See* Dakota Access IB at 24-30.

An important public benefit of the construction and operation of the Dakota Access Pipeline is that it will significantly reduce the current use of railroad and truck transportation to move crude oil from the Bakken/Three Forks region to U.S refinery markets, which will be a public benefit. The extensive use of rail transportation to move large volumes of crude oil from the Bakken/Three Forks region has resulted in a number of highly publicized railroad accidents. Further, it has diverted railroad resources from being available to transport Midwestern and Great Plains region farm harvests. Dakota Access Ex. 3.8 at 6; Staff Ex. 1.0 at 11-12.

Indeed, while the IAA, whose position in this case, if accepted, would inevitably delay the construction and operation of the Pipeline, presented no landowner or agricultural witnesses, the record demonstrates that IAA's position is not in farmers' best interests. Witnesses in this case from the agricultural sector testified in strong support of the need for the Dakota Access Pipeline. For example, Edward Wiederstein, a farmer managing a family farm, and past president of the Iowa Farm Bureau (MAIN Ex. 2.0 at 1-2), who testified in support of approval of the Dakota Access Project, explained that:

As crude oil production has grown, the number of railcars available to transport agricultural products has decreased. This has led to drastically increased shipping costs, lengthy delays at elevators and points of delivery, and a damaged bottom line for farmers throughout the region. Making the decision to move oil by pipe instead of rail will alleviate 4 to 7 unit trains – trains in which all cars carry the same product – per day and help ease transportation shortages for agriculture and

other industries. . . . Getting this crude oil into a state-of-the-art pipeline and off of our roads and rails will help alleviate congestion, free up capacity, and enable farmers to regain access to the methods of transportation that best fit their business Pipelines could free up freight capacity to transport crops and manufactured goods to market, easing the financial costs of shipping agricultural products. (MAIN Ex. 2.0 at 5-6.)

As Mr. Wiederstein further explained:

In the Midwest, the availability of affordable crude oil resources takes on added importance because of how important the agricultural economy is to our region. Farming is the cornerstone of the region's economic landscape. Energy costs weigh heavily on the sector's bottom line. No sector depends more heavily on affordable energy than does the agricultural sector, both directly – through the use of diesel fuel, gasoline, oil and other lubricants, propane, natural gas and more – and indirectly through the use of agricultural chemicals like fertilizers and pesticides. Fuels produced from crude oil meet the lion's share of those needs . . . Infrastructure projects like Dakota Access help the United States assert greater control over domestic energy prices by delivering a steady stream of domestic crude oil to American refineries on the Gulf Coast and nationwide. This increased domestic supply helps to push prices downward. (MAIN Ex. 2.0 at 6-7.)

Similarly, Lynette Schaeffer, President of the Illinois Grange (MAIN Ex. 3.0 at 1), explained that the Dakota Access Pipeline:

. . . will cut down on the spike of rail and truck traffic shipping oil. While the agricultural community has benefitted greatly from reduced energy prices, increased oil production in the Bakken region and a severe lack of sufficient pipeline infrastructure in that region has had negative implications for Midwest farmers. This is because the glut of oil being produced in the Bakken has had no means of reaching markets other than by rail and/or trucks. . . . Today, railcars carry more than a million barrels of crude oil per day This has put immense pressure on the region's rail infrastructure, and diverted railcars previously utilized by grain and livestock farmers to the transportation of crude oil. Farmers in the Midwest who need to move their products to market are getting pushed aside. This makes it extraordinarily difficult to operate a farm economically and profitably. This rail backlog has meant increased costs for farmers, and has taken a bite of a bottom line that can already be too thin for comfort in some years. (MAIN Ex. 3.0 at 5-6.)

Ms. Schaeffer also emphasized the importance of the availability and affordability of energy, particularly products produced from crude oil, to farmers, and noted the beneficial impacts of recent declines in the price of crude oil due to the increased production from the Bakken region, which has had an immediate, positive impact on farmers' bottom lines. MAIN Ex. 3.0 at 2-4.

Additionally, Mr. Justus Templeton, a farmer in Bureau County, Illinois (MAIN Ex. 5.0

at 1), testified to the importance of the Dakota Access Pipeline in reducing the use of railroads to transport oil and freeing up railroad capacity to transport farm products:

The recent surge in oil production in North Dakota – though it has provided a considerable economic boost to the nation as a whole through increased supply and decreased energy costs – is putting a serious strain on transportation throughout the region and making it more costly for farmers to do business. . . . [G]rowing demand for oil from North Dakota’s Bakken shale – and a lack of suitable pipeline infrastructure to move that oil – means more railcars carrying crude and fewer carrying agricultural commodities throughout the Midwest. That means higher prices, reduced efficiency, and long delays for farmers seeking to move their products. . . . The increased tariffs, delays, and costs triggered by this transportation backlog can carve up to \$1.00 from every bushel of corn shipped. . . .

Pipelines such as Dakota Access would make considerable progress in addressing this growing transportation problem. Crude oil can move safely, efficiently, and affordably through pipelines. Grain and other agricultural products, quite simply, cannot. Adding to our pipeline infrastructure will provide an alternative pathway to domestic crude and in doing so help the agricultural sector throughout the Midwest to regain access to railcars. . . . [Dakota Access] can take the equivalent of 4 to 7 unit trains per day of crude oil off of the rails. . . . Those unit trains could be used for agriculture and other products in the upper Midwest, but due to the capacity shortage are being used increasingly to transport crude oil. (MAIN Ex. 3.0 at 3-4.)

Like the other witnesses from the agricultural sector, Mr. Templeton echoed the importance of reliable and affordable access to crude oil-based energy to farming operations, and the benefits of the Dakota Access Pipeline in transporting crude oil to provide the region’s growers with more cost effective energy resources. MAIN Ex. 5.0 at 2-3, 5-6

As described above, the delay for which IAA and SP advocate, by arguing that Dakota Access should be required to file a separate, future proceeding to obtain eminent domain authority, could delay the Project by up to a year or more. That could mean one or more additional harvest seasons in which the availability and costs of rail transportation for farmers to move their harvests to market are adversely impacted by the diversion of rail capacity to transport crude oil from North Dakota.

Additionally, the Dakota Access Project is expected to represent a \$500 million investment in Illinois, with \$367 million to be spent in Illinois on construction and installation; \$31 million of right-of-way payments to Illinois landowners; over 2,000 directly related

construction jobs in Illinois at the peak of construction; materials, components and products manufactured in Illinois, as well as local services providers, used on the Project; and additional tax revenues generated for the State and for local governments. Dakota Access Ex. 2.0 at 18-19; Dakota Access Ex. 2.20 at 3. The need to wait for another proceeding to obtain eminent domain authority to be filed and completed, as IAA and SP advocate, would delay the commencement of this major investment and employment-generating project in Illinois. *Id.* at 3.

IAA and SP contend that the Project does not have an in-service date, and that Dakota Access has not explained the consequences of failing to meet its objective of placing the Pipeline in service in the fourth quarter of 2016. IAA-SP IB at 10. This is incorrect. Mr. Frey testified that Dakota Access has secured long-term transportation agreements from multiple shippers for the full committed volume of the pipeline and that it has commercial in-service date obligations and delivery expectations for the Project to go into service in the fourth quarter of 2016. Dakota Access Ex. 1.0R at 11. Mr. Broad testified that shippers, who have contracted for all the long-term capacity that will be available on the Pipeline, are eager to have the Pipeline completed and to be able to start using its service. Dakota Access Ex. 2.20 at 3-4. Staff witness Mr. Maple, who reviewed a summary of the shipper commitments for the Pipeline (Staff Ex. 1.0 at 7), testified that Dakota Access has secured long-term transportation agreements from multiple shippers for the full committed volume of the Pipeline, that it has time constraints and deadlines in its contracts with shippers, that there is a time sensitive component to the Project, that it is being built to satisfy current market conditions, and that it is not in the public interest to require Dakota Access to continue to negotiate for easements without eminent domain authority. *Id.* at 24; Tr. 120. Further, as Mr. Broad summarized:

If the Commission grants a certificate in good standing for the Dakota Access Pipeline in this proceeding, it will necessarily have found that there is a public need for the project and that it will promote the public convenience and necessity. . . . Delaying the start of construction, and ultimately, the operation of the Pipeline, while another proceeding takes place, will delay the meeting of the public need the Pipeline is intended to meet and the realization of the economic

and other benefits it will provide. (Dakota Access Ex. 2.20 at 3-4.)

Finally, IAA and SP argue that eminent domain is not warranted because there is no information on the status of Dakota Access' requests for authority in the other three states the Pipeline will cross. IAA-SP IB at 11. In the footnotes below, Dakota Access is providing links to the case files for its applications in North Dakota,¹⁴ South Dakota,¹⁵ and Iowa¹⁶ on the websites of the regulatory commissions of each state, so the Commission can see the status of these proceedings. Dakota Access filed its applications in all four states in the same time frame (South Dakota, December 15, 2014; Illinois, December 22, 2014; North Dakota, December 22, 2014; Iowa, January 20, 2015 (after completing the required county-by county informational meetings which were initiated in October 2014)), and all are proceeding at a similar pace. In North Dakota, "formal hearings" were held on May 28, June 15 and June 26, 2015, and Dakota Access anticipates a decision by the end of this year. In South Dakota, evidentiary hearings were held on September 29-30, October 1-2, and October 6-9, 2015; the South Dakota Public Utilities Commission is required by statute to render its decision within one year of the application date (December 15, 2015). South Dakota Codified Laws §49-41B-24. In Iowa, the evidentiary hearings are scheduled for November 16 – December 2, 2015. Further, to the extent the need for the Dakota Access Project is considered to be tied to the ETCO Pipeline Project in Docket 14-0755, the Commission can note that there are no contested issues in Docket 14-0755 and the parties submitted a joint proposed order to the ALJ on September 29, 2015.¹⁷ See Staff IB at 16.

¹⁴ North Dakota Public Service Commission (Case No. PU-14-842):
http://psc.nd.gov/database/docket_view_list.php?s_dept=PU&s_year_case=14&s_seq_num=842&s_company_name=Dakota+Access%2C+LLC.

¹⁵ South Dakota Public Utilities Commission (HP14-002):
<https://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-002.aspx>.

¹⁶ Iowa Utilities Board (Docket HLP-2014-0001):
<https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2014-0001>.

¹⁷ Additionally, in this docket, Dakota Access submitted a list of the permits and approvals it must obtain from other governmental bodies for the Pipeline. Application Ex. H; Dakota Access Ex. 2.5. Staff witness Mr. Maple testified that he was aware of no issues or concerns from any federal, state or local

In any event, as shown herein and in §VIII of Dakota Access' Initial Brief, the need for this Commission to grant §8-509 authority to Dakota Access in this case is supported on its own merits by the record.

IX. Conclusion

For the reasons set forth in Dakota Access' Initial Brief and in this Reply Brief, the Commission should issue an order in this docket granting the authorization, approvals and other relief listed at pages 61-63 of Dakota Access' Initial Brief, and adopting the Findings and Ordering Paragraphs provided in Attachment 1 to Dakota Access' Initial Brief.

Respectfully submitted,

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authorities that would keep Dakota Access from obtaining all the permits and approvals it needs to operate the Pipeline. Staff Ex. 1.0 at 18.

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

Tract Name	Landowner Intervenor Name	Easement Status	Dakota Access Ex. 5.10 Page Reference
IL-HA-057.000	Alice I. Habben GST Trust Mary Taus Marine Bank & Trust	Easement acquired on 7/17/2015	P. 12
IL-HA-065.000	Duane G. Fugate Ruth Elaine Fugate	Easement acquired on 8/10/2015	P. 13
IL-HA-070.000	Harold J. Huls Ina A. Huls	Easement acquired on 8/10/2015	P. 14
IL-HA-071.000	Brian Andrew Martens Florence Mae Martens Michael Troy Martens Todd Matthew Martens	Easement acquired on 8/11/2015	P. 14
IL-HA-072.000	Brian Andrew Martens Florence Mae Martens Michael Troy Martens Todd Matthew Martens	Easement acquired on 8/11/2015	P. 15
IL-HA-076.000	Sidney J. Huls	Easement acquired on 8/11/2015	P. 16
IL-HA-078.000	Sidney J. Huls	Easement acquired on 8/11/2015	P. 16
IL-HA-078.300	Marie Klover Trust Agreement dated May 22, 2007 Roma R. Klover-Ewing	Easement acquired on 8/11/2015	P. 16
IL-HA-078.310	John J. Klover Irrevocable Trust Roma R. Klover-Ewing	Easement acquired on 8/10/2015	P. 16
IL-HA-081.000	Roma R. Klover-Ewing Trust Roma R. Klover-Ewing	Easement acquired on 8/11/2015	P. 17

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Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

IL-HA-086.000	Fred Klover Trust John J. Klover Irrevocable Trust Marie Klover Trust Agreement dated May 22, 2007 Roma R. Klover-Ewing Trust John J. Klover Roma R. Klover-Ewing	Easement acquired on 8/11/2015	P. 17
IL-HA-089.000	David C. Hartweg Trust Judy L. Hartweg Trust Paul A. Hartweg Trust David C. Hartweg Judy L. Hartweg Paul A. Hartweg	Easement acquired on 8/11/2015	P. 18
–	Marlene J. Souder Richard S. Souder	Property is not crossed by the Pipeline route ¹	–
IL-HA-092.000	Orland Redenius Patricia J. Redenius	Offer outstanding (initial offer made on 3/12/2015 – see Dakota Access Ex. 5.8 at 3)	P. 18
IL-HA-099.000	Earl Wendell DeMoss Residuary Trust Virginia B. DeMoss Trust Jon Wendell DeMoss Virginia B. DeMoss	Easement acquired on 8/11/2015	P. 19

¹ Property owned by Marlene J. Souder and Richard S. Souder was listed on the original Landowner List submitted with the Application (Application, Ex. G, pp. 46 and 56) but is not crossed by the Pipeline route – see Dakota Access Ex. 5.8 at 3.

Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015

IL-HA-100.000	Earl Wendell DeMoss Earl Wendell DeMoss Residuary Trust Virginia B. DeMoss Trust Jon Wendell DeMoss Virginia B. DeMoss	Easement acquired on 8/11/2015	P. 19
IL-SY-011.200	Gerald E. & Virginia M. Kearby Trust Gerald E. Kearby	Easement acquired on 4/21/2015	P. 26
–	Kathleen A. Klingele Mary E. Klingele-Ahmed William J. Klingele	Properties are not crossed by the Pipeline route ²	–
IL-BR-029.000	Robert E. and Betty M. Koch Trust Betty Mae Koch Robert E. Koch	Offer outstanding	P. 37
IL-BR-030.200	Alan Koch Amy Koch Glen Koch Rhonda Koch	Offer outstanding	P. 37
IL-BR-030.210	Robert E. and Betty M. Koch Trust Betty Mae Koch Robert E. Koch	Offer outstanding	P. 38

² Property owned by Kathleen A. Klingele, Mary E. Klingele-Ahmed and William J. Klingele was listed on the original Landowner List filed with the Application (Application, Ex. G, pp. 37, 47, 69), but is not crossed by the Pipeline route – *see* Dakota Access Ex. 5.7 at 5.

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

–	Evelyn Thomas	Property is not crossed by the Pipeline route ³	–
IL-BR-034.000	Elizabeth J. Veith Trust Jane M. Veith Trust Julia A. Veith Trust Elizabeth J. Veith Jane M. Veith Julia A. Veith (Property has additional owners besides the named intervenors)	Easement acquired on 7/29/2015	P. 38
IL-BR-035.000	Ann Burns Hendrick Trust Ann Burns Hendrick	Offer outstanding	P. 39
IL-BR-036.000	Carole A. Salrin	Offer outstanding	P. 39
IL-BR-037.000	Carole A. Salrin	Offer outstanding	P. 39
IL-BR-040.521	T. J. Markert Farms, LLC T. J. Markert	Offer outstanding	P. 40
IL-BR-041.521	T.J. Markert Farms, LLC T.J. Markert	Offer outstanding	P. 40
IL-BR-050.000	T J Markert Farms, LLC	Offer outstanding	P. 41

³ Property owned by Evelyn Thomas was listed on the original Landowner List filed with the Application (Application, Ex. G, p. 21), but is not crossed by the Pipeline route.

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

IL-BR-051.000	Andrew M. Ray Julie J. Radel	Offer outstanding	P. 41
IL-BR-052.000	Orville LeeRoy Behymer Trust Tamara Behymer Trust Terry Behymer Trust Wilma J. Behymer Trust Orville Lee Behymer Tamara J. Behymer Terry Behymer Wilma Behymer	Easement acquired on 8/10/2015	P. 41
IL-BR-054.000	Orville LeeRoy Behymer Trust Tamara Behymer Trust Terry Behymer Trust Wilma J. Behymer Trust Orville Lee Behymer Tamara J. Behymer Terry Behymer Wilma Behymer	Easement acquired on 8/10/2015	P. 42
IL-BR-055.000	Tamara Behymer Trust Terry Behymer Trust Orville Lee Behymer Wilma Behymer	Easement acquired on 8/10/2015	P. 42

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

IL-BR-056.000	Donald A. and Mary C. Fry Living Trust Donald A. Fry Mary C. Fry	Offer outstanding	P. 42
IL-BR-057.000	Donald A. and Mary C. Fry Living Trust Donald A. Fry Mary C. Fry	Offer outstanding	P. 43
IL-SC-001.300	Burrus Family Farms, LLC Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998 Todd M. Burrus Declaration of Trust dated Oct. 16, 1998 Deborah J. Burrus Todd M. Burrus	Offer outstanding	P. 65
IL-SC-003.000	Burrus Family Farms, LLC Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998 Todd M. Burrus Declaration of Trust dated Oct. 16, 1998 Deborah J. Burrus	Offer outstanding	P. 66
IL-SC-003.300	Burrus Family Farms, LLC Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998 Todd M. Burrus Declaration of Trust dated Oct. 16, 1998 Deborah J. Burrus Todd M. Burrus	Offer outstanding	P. 66

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

<p>IL-SC-005.000</p>	<p>Burrus Family Farms, LLC</p> <p>Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998</p> <p>Todd M. Burrus Declaration of Trust dated Oct. 16, 1998</p> <p>Deborah J. Burrus</p> <p>Todd M. Burrus</p>	<p>Offer outstanding</p>	<p>P. 66</p>
<p>IL-SC-006.000</p>	<p>Burrus Family Farms, LLC</p> <p>Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998</p> <p>Kathy Head</p> <p>Kevin Burrus</p> <p>Todd M. Burrus Declaration of Trust dated Oct. 16, 1998</p> <p>Deborah J. Burrus</p> <p>Todd M. Burrus</p>	<p>Offer outstanding</p>	<p>P. 67</p>
<p>IL-SC-006.300</p>	<p>Burrus Family Farms, LLC</p> <p>Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998</p> <p>Todd M. Burrus Declaration of Trust dated Oct. 16, 1998</p> <p>Deborah J. Burrus</p> <p>Todd M. Burrus</p>	<p>Offer Outstanding</p>	<p>P. 67</p>

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

IL-SC-006.310	Burrus Family Farms, LLC Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998 Todd M. Burrus Declaration of Trust dated Oct. 16, 1998 Deborah J. Burrus Todd M. Burrus	Offer outstanding	P. 67
IL-SC-007.300	Burrus Family Farms, LLC Deborah J. Burrus Declaration of Trust dated Oct. 28, 1998 Todd M. Burrus Declaration of Trust dated Oct. 16, 1998 Deborah J. Burrus Todd M. Burrus	Offer outstanding	P. 68
IL-MA-018.000	Daniel K. Bates Revocable Living Trust Daniel K. Bates	Easement acquired on 6/30/2015	P. 79
IL-MA-018.300	Daniel K. Bates Revocable Living Trust Daniel K. Bates	Easement acquired on 6/30/2015	P. 79
IL-MA-029.000	Drenda K. Sims Richard R. Sims	Easement acquired on 6/29/2015	P. 81
IL-MA-030.000	Drenda K. Sims Richard R. Sims	Easement acquired on 6/29/2015	P. 81
IL-MA-031.000	Drenda K. Sims Richard R. Sims	Easement acquired on 6/29/2015	P. 82

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

IL-MA-060.000	Irma Jane Vance Norman R. Vance	Easement acquired on 6/29/2015	P. 85
IL-MA-061.000	Irma Jane Vance Norman R. Vance	Easement acquired on 6/29/2015	P. 86
IL-MA-062.000	Darrell R. Bivin Frances L. Bivin	Easement acquired on 6/30/2015	P. 86
IL-MA-063.000	Darrell R. Bivin Frances L. Bivin	Easement acquired on 6/30/2015	P. 87
IL-MA-064.000	Darrell R. Bivin Frances L. Bivin	Easement acquired on 6/30/2015	P. 87
IL-MA-134.000	Carolyn Pickett Linda Kessinger	Easement acquired on 6/30/2015	P. 96
IL-MA-069.000	Dennis G. Selinger Dorothy F. Selinger	Easement acquired on 6/30/2015	P. 88
IL-MA-187.518	Norman Rull 1996 Declaration of Trust Shirley Rull 1996 Declaration of Trust Jane Warren Shirley J. Rull	Easement acquired on 6/30/2015	P. 108
IL-MG-077.000	Jane O. Black Lynn E. Black	Easement acquired on 6/29/2015	P. 120
–	Cellular Properties, Inc. Tower Realty Corp.	Do not own properties crossed by the Pipeline route	–

**Attachment 1 to Dakota Access Reply Brief
Easement Acquisition Status for Landowner Intervenor Properties as of August 12, 2015**

	Howard Hartke	Property is not crossed by the Pipeline route. ⁴	
	Janice Kalaher and William Kalaher	Property is not crossed by the Pipeline route. ⁵	
–	Clarence E. Christin Revocable Trust Nelda Christin Rodney Christin	Do not own properties crossed by the Pipeline route ⁶	–
IL-MR-021.000	Oelze Equipment Company, LLC	Offer outstanding	P. 141

⁴ Property owned by Howard Hartke was listed on the original Landowner List filed with the Application (Application, Ex. G, p. 27), but is not crossed by the Pipeline route.

⁵ Property owned by Janice Kalaher and William Kalaher was listed on the original Landowner List filed with the Application (Application, Ex. G, pp. 30, 69), but is not crossed by the Pipeline route.

⁶ Property owned by the Christins was listed on the original Landowner List filed with the Application (Application, Ex. G, pp. 30, 69), but is not crossed by the Pipeline route.

Attachment 2 – Response to Tripp Exhibits

This Attachment 2 to this Reply Brief provides Dakota Access, LLC’s response to the exhibits submitted by Tabitha Tripp. Dakota Access’ evidence and arguments in response to the Tripp exhibits is presented below under the headings §IV – Fit, Willing and Able, and §V – Public Need/Public Convenience and Necessity. On the afternoon of October 14, 2015, the Administrative Law Judge (“ALJ”) issued a ruling denying Ms. Tripp’s October 8, 2015 motion to admit her exhibits into the record. Also on October 14, Ms. Tripp filed a pleading stating that she planned to file a reply brief in this docket on October 15. (Ms. Tripp did not file an initial brief.) In light of the fact that this proceeding has an approaching statutory deadline of December 22, 2015, Dakota Access has included Attachment 2, which can be considered by the ALJ and the Commission in the event that the Tripp exhibits are subsequently admitted into the record or a reply brief is filed by Ms. Tripp making arguments based on her evidence.

IV. Fit, Willing and Able (Response to Tripp Exhibits)

A. Financial Capability

Tripp Exhibit 2 (which states that it was prepared by a third person who did not appear as a witness or submit an affidavit), criticized Commission Staff’s analysis of the financial ability of Dakota Access and its owners to finance the construction of the Dakota Access Pipeline (“Pipeline” or “Project”). This criticism should be rejected. Staff’s financial analysis, presented by Staff Senior Financial Analyst Rochelle Phipps in Staff Ex. 3.0R, was quite thorough and examined the financial strength and ability of the three ultimate equity owners of Dakota Access – Energy Transfer Partners, L.P. (“ETP”), Sunoco Logistics, L.P. (“SXL”), and Phillips 66 – to finance the construction of the Pipeline, based on several different measures of financial strength. These measures include assets, revenues, liquidity, investment grade credit ratings, and stability of revenues and cash flows from the companies’ existing business bases. In fact, Ms. Phipps demonstrated that either ETP or Phillips 66 is capable of financing, by itself, the

construction of both the Dakota Access Project and the Energy Transfer Crude Oil Company, LLC (“ETCO”) Pipeline Project. Additionally, Ms. Phipps pointed out that the Dakota Access Project has limited operating risk because shippers have contracted for such a large percentage of the Pipeline’s system capacity. Staff Ex. 3.0R; Dakota Access Ex. 3.8 at 9-10; *see* Dakota Access Initial Brief (“IB”) at 21-22. These substantial advance contractual commitments by shippers also greatly limit construction financing risk for the Project. Dakota Access Ex. 3.8 at 10.

Tripp Exhibit 2 also focused on a comparison of ETP’s existing liabilities to its liquid assets. However, this comparison is not an appropriate basis for determining ETP’s ability to finance its share of the Project’s construction costs. A current ratio is not indicative of an entity’s ability to raise capital for long-term projects; therefore, the comparison in Tripp Exhibit 2 is not an accurate measure of ETP’s capability to finance its share of the Project’s capital expenditure requirements. To the contrary, as reflected by ETP’s investment grade credit rating from each of the major credit rating agencies, ETP’s strong financial position will enable it to fund its portion of the Project’s capital cost. Dakota Access Ex. 3.8 at 10. Additionally, ETP (like each of the other two ultimate equity owners of Dakota Access) has access to a substantial credit facility. Further (as is also the case for the other two equity owners), the dollar amount of ETP’s construction funding obligation for its ownership share of the Project is a relatively small percentage of ETP’s total assets and annual revenues. Dakota Access IB at 10-13.

B. Operation of the Pipeline

Tripp Exhibits 3 and 4 referenced several spills and leaks that have occurred at pipeline, terminal or storage facilities of ETP, SXL, or their affiliates.¹ Mr. Stamm, who is Vice President – Pipeline Operations of SXL, described the steps that are taken by ETP, SXL, and their affiliates in the event of a pipeline leak or spill to remedy any damage and to prevent recurrence

¹ A number of the incidents referred to in the Tripp exhibits did not involve pipeline leaks or spills, but rather are claims against Sunoco and other companies as refiners, manufacturers and sellers of gasoline for alleged MTBE contamination of groundwater. These claims are not pertinent to evaluating the safety of ETP’s and SXL’s pipeline operations. Dakota Access Ex. 4.2 at 3-4.

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of the incident.² He explained that the first action, of course, is always to stop the leak, repair the damaged area, and remediate any damage that has occurred in the nearby area. ETP or SXL may expend sums on remediation of the area that far exceed the value of the commodity lost or the cost of repairing the damaged facility. Dakota Access Ex. 4.2 at 3. ETP or SXL will also undertake an extensive investigation of the incident to determine the root cause, identify any lessons learned, and evaluate what steps or measures should be taken to prevent recurrence, both at the impacted facility and at other, similarly situated facilities of the company. External experts are engaged as appropriate to assist in the investigation and development of a corrective action plan, which may also be conducted and developed in conjunction with responsible local, state and/or federal authorities. *Id.* at 3. Mr. Stamm stated that for each of the incidents listed in the Tripp exhibits that involved SXL's pipeline operations, SXL investigated the incident as just described, including identifying and implementing measures to prevent recurrence. *Id.* at 4.

In response to Tripp Exhibits 3 and 4, Mr. Stamm summarized information presented by Dakota Access that demonstrates the Pipeline will be operated safely. First, the Pipeline will be fabricated and installed in accordance with ETP's standards, which in many respects exceed regulatory requirements and industry norms. This includes inspections of the pipe that will be conducted at the fabrication facilities, extensive inspection and testing of welds (including non-destructive testing of 100% of field welds), use of protective coatings to prevent corrosion, installation of cathodic protection systems, and the care that will be exercised in transporting the pipe sections to the field, installing them, and inspecting the pipe after installation and before operation, including by in-line testing. The use of these superior fabrication, welding, installation, inspection and testing procedures provides the foundation to have a pipeline in place that can be operated with minimal risk of leaks. Dakota Access Ex. 4.2 at 2.

² Personnel and resources of SXL will be principally responsible for operation and maintenance of the Dakota Access Pipeline. Dakota Access Ex. 4.2 at 1.

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Second, extensive processes and procedures will be in place to provide for safe operation of the Pipeline, including:

- 24 X 7 X 365 monitoring and control through a state-of-the-art Operations Control Center (“OCC”);
- use of an advanced Supervisory Control and Data Acquisition System and Computational Pipeline Monitoring System to enable the operators to constantly monitor numerous operational parameters of the Pipeline;
- adoption and implementation of strict operations procedures to direct the operators’ actions;
- appropriate training of both operators and field personnel;
- the ability to remotely (by the operators in the OCC) or manually (by local field personnel) shut down pump stations and isolate pipeline segments if abnormal conditions are detected; and
- implementation of detailed maintenance procedure, including procedures for regular inspections (including by internal inspection technology) and surveillance of the Pipeline. (Dakota Access Ex. 4.2 at 2.)

Additionally, Dakota Access will have emergency response personnel strategically positioned along the route of the Pipeline to respond to any pipeline emergencies, will have an emergency response plan in compliance with federal regulations in place, and will coordinate with and train local authorities and emergency responders in preventing and responding to any pipeline-related problems. Finally, Dakota Access will implement an extensive public education and outreach program, will post signage along the Pipeline route to alert the public to its presence, and will participate in the 811 One-Call System; these measures are intended to prevent pipeline damage and leaks due to inadvertent or negligent actions of third parties, such as excavators. *Id.* at 2-3.

V. Public Need/Public Convenience and Necessity (Response to Tripp Exhibits)

Tripp Exhibits 1 through 4 contain various assertions which, in the aggregate, seem to be arguing that there is not a need for the Dakota Access Pipeline because oil is in over-supply, gasoline demand is falling in Illinois, and there is no current or threatened shortage or rationing of petroleum products in Illinois. The record shows that these assertions are without foundation,

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and that there is a strong demand for service on the Pipeline, and a public need for the service it will provide.³ Dakota Access Ex. 3.8 at 2.

The strongest sign of a public need and demand for the Dakota Access Pipeline is that shippers have contracted, in the aggregate, for 90% of the approximately 450,000 barrels per day crude oil transportation capacity of the Pipeline.⁴ While a pipeline operator like Dakota Access is simply a common carrier, it is the actions of shippers that best demonstrate whether there is a demand for the transportation services that a particular pipeline will provide. Despite the assertions in the Tripp exhibits about the supply and demand situation for crude oil and refined petroleum products, the fact that shippers have committed to multi-year contracts for the available transportation capacity on the Dakota Access Pipeline demonstrates that they see a need for new crude oil pipeline transportation capacity and service from the Bakken/Three Forks production region to Patoka, Illinois, and in some cases on to the Gulf of Mexico refinery complex via the ETCO Pipeline. Dakota Access Ex. 3.8 at 2.

Further, there has been tremendous growth in crude oil production from the Bakken/Three Forks region in just the last five years. (*See* Dakota Access IB at 22-23.) It is the greatly increased crude oil production from the Bakken/Three Forks region and other new domestic production areas that, along with production from Western Canadian sources, has enabled the U.S. to significantly reduce the percentage of its crude oil supplies that come from other foreign countries such as those in the Middle East, South America, and Africa. However, currently there simply is not sufficient outbound pipeline capacity to move the volumes of crude oil being produced in the Bakken/Three Forks region to Midwestern and Gulf Coast refinery

³ Mr. Rahbar-Daniels, ETP's Vice President – Commercial Operations, testified that he does not accept the term “over-supply,” as the intersection of supply and demand for crude oil and refined petroleum products defines a market price for these commodities. He pointed out that the prospect of “\$2 gasoline,” as has recently been projected by some sources, is good for consumers. Dakota Access Ex. 3.8 at 6.

⁴ This is actually 100% of the Pipeline's capacity that Dakota Access is authorized to commit to shippers under long-term contracts; under Federal Energy Regulatory Commission rules, Dakota Access is required to reserve 10% of the Pipeline's capacity for walk-up shippers. Dakota Access Ex. 3.8 at 2.

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markets. Again, this reality is reflected in the actions of shippers in committing to long-term contracts for the transportation capacity of the Pipeline. Dakota Access Ex. 3.8 at 2-3.

Mr. Rahbar-Daniels responded to assertions that crude oil production in the Bakken/Three Forks region has been declining in the face of recent declines in market prices. Over the last several years, production from the Bakken/Three Forks region has grown tremendously. Dakota Access Ex. 3.8 at 3; *see* Dakota Access IB at 22-23. Even if production from the Bakken/Three Forks region were to decline from existing levels, there will still be significant volumes of production from the Bakken/Three Forks region for which additional outbound pipeline transportation capacity is needed. Dakota Access Ex. 3.8 at 4.

Further, when there is a decline in market prices such as seen in recent months, the impact is typically reflected principally in a reduction or cessation of new drilling or completion activity that would require new capital expenditures. Existing drilling operations with sunk capital costs for equipment and leases are more likely to continue to produce crude oil, particularly in more productive areas like the Bakken/Three Forks region. Dakota Access Ex. 3.8 at 3. Moreover, the price of crude oil is not the only factor that determines the pace of development within production areas like the Bakken/Three Forks region. Reductions in drilling and completion costs, and improvements in the efficiency of producers' drilling and completion activities, can continue to incentivize oil and gas production activities, even in the face of declining crude oil prices. Producers are able to derive more barrels of produced oil for each dollar invested in the production process, supporting the producer's returns despite lower market prices. A producer can also sustain or increase production levels in a low-price environment by "high-grading" drilling and completion activities within the core of its acreage holdings, where the producer expects the best well performance. These factors help to explain why recent data on production from the Bakken/Three Forks region shows that production actually has increased in North Dakota, even while the number of active rigs in the area declined. *Id.* at 3-4.

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Tripp Exhibit 2 asserted that several pipelines already deliver crude oil to the Patoka Hub.⁵ However, the existence of other pipelines with delivery capacity to the Patoka Hub does not demonstrate a lack of need for the Dakota Access Pipeline. To the contrary, the market has convincingly demonstrated the overwhelming demand for the Dakota Access Pipeline. Multiple parties have entered into binding long-term transportation contracts to support the construction of the Pipeline. Dakota Access Ex. 3.8 at 4.

Moreover, only a limited volume of Bakken/Three Forks crude oil can currently reach the Patoka Hub through existing pipeline systems, and those volumes have to be transported through multiple different upstream pipeline systems before reaching the Patoka Hub. Many of those pipelines carry a wide range of grades of crude oil from multiple different basins, further restricting the access that the Patoka Hub can have to Bakken/Three Forks crude oil, and also increasing the risk of quality downgrades from commingling and mixing during transportation. Dakota Access Ex. 3.8 at 6. In contrast, the Dakota Access Pipeline uniquely offers shippers a single pipeline system that directly links the productive Bakken/Three Forks region to the key logistics terminals and other pipelines at the Patoka Hub. This is different, for example, from the TransCanada Keystone Pipeline, which transports only Canadian crude oil from Alberta, Canada, to the Patoka Hub. It is also different from the other two pipeline systems identified by Tripp Exhibit 2 that do in fact deliver to the Patoka Hub, the Mustang Pipeline and Marathon Pipe Line LLC's Woodpat Pipeline. Neither of these pipeline systems offers seamless transportation directly from the Bakken/Three Forks production region to the Patoka Hub. *Id.* at 4-5.

Thus, the Dakota Access Pipeline offers shippers a materially different service than do the pipeline systems identified in Tripp Exhibit 2. The service is different from that offered by TransCanada because it allows transportation of Bakken/Three Forks production to the Patoka

⁵ Tripp Exhibit 2 listed five companies as delivering crude oil to Patoka. However, one of the listed companies, Shell, does not own or operate a pipeline that delivers crude oil to Patoka, and two of the other listed companies, Enbridge and ExxonMobil, jointly own (through subsidiaries) a single pipeline (the Mustang Pipeline) delivering crude oil to Patoka. Dakota Access Ex. 3.8 at 4.

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Hub, which the Keystone Pipeline does not. With respect to the Mustang and Woodpat Pipelines, because the Dakota Access Pipeline will be directly connected to the Bakken/Three Forks production area, its shippers do not face the same risks of having the quality of their Bakken/Three Forks crude oil downgraded through comingling with other types of crude oil or through the mixing that results from pipeline interfaces and the movement of crude oil over tank bottoms during the transportation process. This type of comingling and mixing can significantly alter the quality of a shipper's Bakken/Three Forks crude oil and degrade its value. Dakota Access Ex. 3.8 at 5. Additionally, shippers on Dakota Access are able to contract with a single company to transport their crude oil from the Bakken/Three Forks area to the Patoka Hub. This allows shippers to achieve certainty regarding both the availability of pipeline capacity for the entire route from North Dakota to the Patoka Hub and the associated rates for the service. Dakota Access provides that certainty to shippers for a large volume of Bakken/Three Forks production, which the Pipeline's contracted shippers clearly desired. *Id.* at 5-6.

Further, even if crude oil were viewed as currently being in an "over-supply" situation, there are other factors that support the public need for the Dakota Access Pipeline and show that it will promote the public convenience and necessity. Pipeline transportation is the safest, most efficient and most economical means of moving large volumes of crude oil over long distances. Construction and operation of the Dakota Access Pipeline, originating in the Bakken/Three Forks region, will significantly reduce the need to transport crude oil from this region via other modes such as railroad and truck. The extensive use of railroad transportation to move large volumes of crude oil from the Bakken/Three Forks region has resulted in a number of highly-publicized accidents and has also diverted railroad resources from being available to transport Midwest and Great Plains region farm harvests (*see* further discussion of this point in §VIII.C of Dakota Access' Reply Brief). Second, it is the increased production of crude oil from newer domestic sources, such as the Bakken/Three Forks region, that is enabling the U.S. to greatly

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reduce its dependence on waterborne foreign oil supply sources, a number of which are either politically unstable or actively hostile to this country. This shifting of supply sources enhances national security and reduces the risk of supply interruptions and price spikes due to international events. Third, transportation of light, sweet crude oil by the Dakota Access Pipeline to the Patoka Hub will increase the availability of the supply of this crude oil to Midwestern and Gulf Coast refineries (through shipment from Patoka on other pipelines, including the ETCO Pipeline), increasing the supply options and supply diversity for these refineries. Dakota Access Ex. 3.8 at 6-7.

Although Tripp Exhibit 1 purports to show that consumption of gasoline in Illinois has fallen in recent years, this does not mean that there is not a public need for the Dakota Access Pipeline. Even if consumption of gasoline in Illinois fell following the “Great Recession,” Illinois remains one of the top petroleum-consuming states in the U.S. In terms of refined products, total prime supplier sales and deliveries of gasoline for Illinois still exceeded 12,553,200 gallons per day in 2014. In fact, prime supplier sales and deliveries of regular gasoline for Illinois have nearly returned to the numbers immediately preceding the Great Recession, having increased by approximately 223,300 gallons per day between 2009 and 2014. Likewise, retail demand for distillate fuel oil actually increased by nearly 8% for Illinois between 2009 and 2013, also approaching the levels of consumption seen in Illinois right before the Great Recession. Total prime supplier sales and deliveries for distillate and kerosene for Illinois reached the highest level ever at 5,905,500 gallons/day in 2014. Dakota Access Ex. 3.8 at 7-8.

Importantly, it remains the case that there is insufficient refinery capacity in PADD II, which includes Illinois, to meet the demand for refined petroleum products in the region, and that a significant portion of the refined petroleum products consumed in the PADD II region comes from the output of refineries in the PADD III region, which includes the Gulf Coast refinery complexes that the Dakota Access Pipeline and ETCO Pipeline will serve. In other words, a

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portion of the crude oil transported over the Dakota Access Pipeline will wind up as gasoline and other refined petroleum products that are used by consumers in Illinois and nearby states. Dakota Access Ex. 3.8 at 8. Further, petroleum product markets are national and regional in nature, not isolated to individual states or constrained by state political boundaries, and prices of refined petroleum products are determined on a regional or even national basis. Demand projections by the U.S. Department of Energy's Energy Information Administration do not show a reduction in the country's demand for petroleum products in the foreseeable future. To meet the U.S.' strategic goal of being energy independent, the Dakota Access Pipeline will facilitate the continued ramp up of movements of crude oil from the North Dakota producing fields to the domestic refining markets where there is demand for the crude oil. *Id.* at 8.