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January 29, 2016

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Errata to Badlands' Comments filed in Case No. PU-15-788

Dear Chairman Fedorchak, Commissioner Kalk, and Commissioner Christmann:

On January 27, 2016, Badlands NGLs, LLC ("Badlands") submitted Comments to address issues raised by the North Dakota Public Service Commission during its January 26, 2016 work session involving the Alliance Pipeline LP proceeding in Docket No. RP15-1022, which is currently pending before the Federal Energy Regulatory Commission. Badlands has since discovered that, in its haste to make a timely filing, some changes to the Comments were inadvertently not made. Badlands has corrected the error and is attaching both a "Corrected Copy" and a redline version to show the changes. Badlands sincerely apologizes for the error and any inconvenience.

Respectfully submitted,

Robin Wade Forward

Robin Wade Forward

5 PU-15-788 Filed: 1/29/2016 Pages: 69
Corrected Version of Response Filed Previously on 01/27/2016
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Corrected Copy

UNITED STATES OF AMERICA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION

Case No. PU-15-788

COMMENTS OF BADLANDS NGLS, LLC

Badlands NGLs, LLC ("Badlands") respectfully submits these comments to the North Dakota Public Service Commission ("Commission") to address issues raised during the Commission's January 26, 2016 work session involving a proceeding currently pending before the Federal Energy Regulatory Commission ("FERC") – *Alliance Pipeline LP*, Docket No. RP15-1022-000. At issue in the FERC proceeding, among other things, is the exclusive processing arrangement between Alliance Pipeline LP ("Alliance") and its affiliate, Aux Sable Liquid Products LP ("Aux Sable"). Specifically, the Alliance corporate family requires all shippers of Canadian-sourced gas to provide Aux Sable with the exclusive right to extract natural gas liquids ("NGLs") from the rich gas stream transported by Alliance.

In addition, Alliance has two North Dakota receipt points -- the Tioga lateral and the Prairie Rose pipeline, the latter delivering gas that is gathered and processed by the Palermo plant, both of which are owned by the Aux Sable corporate family. All North Dakota production transported by Alliance is processed by Aux Sable in Illinois because no one has been able to build a competing straddle plant. In short, Alliance's current tariff and the existing exclusive processing arrangements with Aux Sable have already done their damage. Just modifying Alliance's tariff language will not undo the harm.

Because of the exclusive processing arrangement, Badlands has been unable to obtain ethane (an NGL) that Alliance transports through North Dakota. Badlands, its North Dakota investors, and the State's interests have been harmed by the exclusive processing arrangement.

As a result, Badlands urges the Commission, in compliance with North Dakota statutes, adopt the proposed resolution set forth below and support Badlands' position at FERC, particularly in ongoing settlement negotiations.

In addition, the FERC Trial Staff has authorized Badlands to state the following:

> Settlement negotiations are ongoing in the Alliance Pipeline L.P. (Alliance) proceeding, in Docket No. RP15-1022 at the Federal Energy Regulatory Commission (FERC). A settlement has not been reached in this proceeding. One of the issues in this case is the inability of Badlands NGL's LLC (Badlands) to secure access to the natural gas stream transported by Alliance for purposes of extracting and processing the ethane component of the natural gas stream.
>
> The FERC Trial Staff believes that Badlands inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may be inconsistent with the FERC's natural gas pipeline open access interconnection/transportation rules, regulations and precedent. The FERC Trial Staff further believes that Badlands' inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may create issues of undue discrimination and undue preference under the Natural Gas Act. Finally, long-standing FERC precedent requires the FERC to consider the impact on competition of its actions. The FERC Trial Staff believes that the facts underlying Badlands' inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may constitute anti-competitive conduct.

In support of these Comments, Badlands states as follows:

I.
ISSUES PRESENTED

1. **The Alliance corporate family forces its shippers to grant its affiliate, Aux Sable, the exclusive right to extract and take title to all NGLs transported by the pipeline. Does this exclusive processing arrangement between Alliance and Aux Sable Liquid violate federal law?**

Yes. The exclusive processing arrangement violates the Sections 4 and 5 of the Natural Gas Act, by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable. It is also anticompetitive: the Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Furthermore, the FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

2. **A North Dakota statute requires the Commission to urge an interstate pipeline to change practices that discriminate against or unreasonably disadvantage State citizens, interest or industries, when such practices are in violation of federal law. The Alliance/Aux Sable exclusive processing arrangement discriminates against and disadvantages North Dakotans and State interests; it also violates federal law. Is the Commission required to urge Alliance and Aux Sable to remedy the harm from their exclusive processing arrangement?**

Yes. Section 49-02-17 of the North Dakota Century Code ("NDCC") requires Commission action. The Alliance/Aux Sable exclusive processing arrangement discriminates against (1) North Dakota citizens who are investors in Badlands, (2) the State's nascent polyethylene industry, which Badlands is spearheading, and (3) the State's interests in developing a value-added petrochemical industry. Similarly, the exclusive processing arrangement places Badlands' North Dakota investors, the State's nascent polyethylene industry, and the largest single private investment in the State's history at an unreasonable disadvantage compared to Aux Sable's processing in Illinois and Badland's competing polyethylene manufacturers in Illinois. Moreover, as noted above, the exclusive processing arrangement violates federal statutes and FERC rules. As such, NDCC § 49-02-17 compels the Commission to urge the Alliance/Aux Sable corporate family to change the exclusive processing practice.

At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement. Stated differently, all that would be required at this stage of the FERC proceeding would be for the Commission to support Badlands in settlement discussions. This alone could help resolve the dispute.

3. **Alliance's FERC tariff requires shippers to warrant that all Canadian gas is subject to an exclusive processing arrangement with Aux Sable. Other Alliance tariff provisions reference Aux Sable's exclusive right to extract and take title to NGLs. If Alliance were to "neutralize" these tariff provisions by removing the reference to Aux Sable, would the Commission still be compelled under NDCC § 49-02-17 to urge additional remedies?**

Yes. First, the Commission should note that there is no "settlement agreement" as represented by Alliance to the Commission. There have only been discussions of options. If Alliance offered to, and in fact did, neutralize its tariff by removing all direct and indirect references to Aux Sable, there would still be a problem. As required by prior and existing tariffs, **all** Alliance shippers have already executed Extraction Agreements with Aux Sable. The current tariff and existing exclusive processing arrangement have already completed the damage; that is the gravamen of the complaint. Attached as Exhibit A to this pleading is the Template Extraction Agreement, which was used as a model for every Alliance shipper's Extraction Agreement with Aux Sable because no one has been able to build a competing straddle plant.[1]

A few key provisions merit mention. Section 1 defines "Extraction Rights" as "the sole and exclusive right to extract and take title to any NGLs." Section 2, in pertinent part, provides:

> Shipper represents and warrants that it has done nothing to alienate, encumber or impair such grant of Extraction Rights, and covenants and agrees that it will not at any time purport to grant to any other party any right to extract NGLs from Shippers Gas or otherwise do anything that might interfere with or adversely affect the Extraction Rights conferred on Aux Sable or Aux Sable's ability to exercise these extraction rights.

And, Section 11 provides that the term of the Extraction Agreement lasts until two (2) years after the expiration or termination of the shipper's transportation agreement. As such, Alliance's shippers have already provided Aux Sable with exclusive extraction rights and warranted that they will not impair Aux Sable's exclusive extraction rights. Any offer by Alliance to neutralize

[1] https://www.alliancepipeline.com/Business/OurServices/Pages/default.aspx

its tariff would be a hollow gesture: Aux Sable would still have exclusive rights to extract all NGLs from all gas transported by Alliance.

II.
EXECUTIVE SUMMARY

Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane, the latter to be used as a feedstock. The Alliance pipeline travels through North Dakota, picks up North Dakota gas at the Tioga lateral and Prairie Rose pipeline (owned by an affiliate of Aux Sable), and transports a rich gas stream of methane and NGLs, including ethane. Badlands' attempts to obtain ethane transported by Alliance have been rebuffed. Alliance's FERC tariff requires every shipper to "warrant" – that is, unconditionally guarantee – that all gas received from Alliance's upstream affiliate will be processed exclusively by Alliance's downstream affiliate. Further compounding the problem, **all** Alliance shippers (whose gas was sourced in Canada) have entered into extraction agreements providing Aux Sable with the exclusive right to extract and take title to all the shipper's NGLs. All North Dakota production transported by Alliance is also processed by Aux Sable because no one has been able to build a competing straddle plant.

The exclusive processing arrangement between Alliance and its affiliate Aux Sable, and other issues, is the subject of an evidentiary hearing at FERC in Docket No. RP15-1022-000. The litigation is currently in the discovery phase, but settlement negotiations are also being conducted. There is no settlement agreement, not on rates or conditions of service. There is not even a settlement in principle. Any representation to the contrary is inaccurate.

At FERC, Badlands has established that the exclusive processing arrangement between Alliance and Aux Sable is illegal under federal law. It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux

Sable. For the same reasons, is also anticompetitive. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Furthermore, FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

Under NDCC § 49-02-17, the Commission is required take issue with the Alliance/Aux Sable exclusive processing arrangement because it (1) discriminates against North Dakota citizens who are investors in Badlands, the State's nascent polyethylene industry, which Badlands is spearheading; (2) places these North Dakota interests at an unreasonable disadvantage, compared to Illinois processing (by Aux Sable) and competing polyethylene manufacturers; and (3) violates federal statutes and FERC rules. The Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement.

Moreover, any offer by Alliance to "neutralize" its FERC tariff (by removing direct and indirect references to Aux Sable) would be a hollow gesture, given that each and every Alliance shipper has entered into an extraction agreement, which provides Aux Sable with the exclusive right to extract and take title to all NGLs (including ethane). At this juncture, it is Alliance's exclusive processing arrangement with Aux Sable that requires remedy, not just the pipeline's tariff language.

Finally, Alliance has suggested that it is only a pipeline transporter and cannot provide Badlands with any ethane. That dog won't hunt. Admittedly, the shippers own the gas. But the Alliance corporate family has required its shippers to exclusively use Aux Sable for all NGL extraction and processing. And Alliance's owners also own and control Aux Sable. In short, the Alliance corporate family makes ethane available to Aux Sable, but only to Aux Sable.

III. BACKGROUND

A. ETHANE

When produced, especially from shale formations, natural gas is very rich in NGLs: one thousand cubic feet of raw natural gas may contain approximately eight to twelve gallons of NGLs, of which more than 40% is ethane (C_2H_6). In short, there are only two ways to use ethane: (1) blend it with a natural gas stream in a pipeline and sell it Btu or heat content and (2) use it as a petrochemical feedstock.

The ethane removed by a processing plant can be blended in with the dry gas and transported by interstate natural gas pipelines. In this case, the heat content of ethane is 1775 Btu/cf and methane 950 Btu/cf. For operational and safety reasons, most interstate natural gas pipelines typically have a maximum heat content of 1100 Btu/cf. As a result, the natural gas stream of most interstate pipeline can only contain a modest amount of ethane.[2]

B. BADLANDS

Badlands is a limited liability company organized and existing under the laws of Delaware. Its principal place of business is located at 1999 Broadway, Denver, Colorado 80202. Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane, the latter to be used as a feedstock. Specifically, Badlands' facility will (1) convert ethane gas to low density and high density plastics which are used to make a wide range of end products for consumers and

[2] As noted below, Alliance is unique; it transports a rich gas stream that contains NGLs, including ethane.

industry; (2) be able to produce up to 4.4 billion pounds of polyethylene annually; (3) will result in thousands of new construction jobs and ultimately employ 500 highly trained people in manufacturing, marketing, administrative, safety, financial and executive positions; and (4) be the single largest private equity project in the history of North Dakota. This does not take into account the likelihood of downstream plastic molding and compounding companies siting in North Dakota, or benefits to existing North Dakota companies from locally available polyethylene, such as a PE pipe compounder in Fargo with whom Badlands has been in communication. And, significantly, the majority of Badlands investors are North Dakotans.

C. THE ALLIANCE CORPORATE FAMILY

"Alliance is an open-access interstate natural gas pipeline that . . . extends from an interconnection with Alliance Pipeline Limited Partnership ("Alliance Canada") at the U.S.-Canadian border at Renville County, North Dakota to . . . eight delivery points in the competitive Chicago, Illinois market area."[3] The Alliance pipeline traverses diagonally though North Dakota, entering the northwestern portion of the State and exiting in the southeastern corner.[4] Alliance transports rich gas which contains natural gas liquids (NGLs); that is, natural gas stream requires processing prior to commercial and residential consumption. Two corporate families (Enbridge and Veresen) own and control <u>both</u> the Alliance pipeline system (both the Canadian

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[3] May 29 Transmittal Letter at 1.

[4] A map depicting the Alliance pipeline route is attached as Exhibit B.

and American pipelines) and Aux Sable,[5] which exclusively extracts and processes in Illinois all natural gas liquids (NGLs) transported by Alliance.[6]

Another Alliance affiliate, Aux Sable Midstream owns and operates the Palermo Conditioning Plant and the Prairie Rose Pipeline in North Dakota:[7]

> The 80 mmcfd Palermo Conditioning Plant removes condensate from rich field gas prior to shipping to Alliance via the Prairie Rose Pipeline. The Prairie Rose Pipeline connects the Palermo Plant to the Alliance Pipeline, which delivers liquids-rich gas to Aux Sable's Channahon, Illinois facility for processing.[8]

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[5] Alliance is owned by Enbridge Income Fund Holdings Inc. (50%) and Veresen Inc. (50%). http://www.alliancepipeline.com/AboutUs/OurCompany/Pages/Ownership.aspx1

Aux Sable is owned 42.7% by Enbridge, 42.7% by Veresen, and 14.6% by Williams. http://www.auxsable.com/top-navigation/about-us/ownership

[6] Aux Sable owns the Channahon NGL Extraction & Fractionation Facility:

> The facility is located in Channahon, Illinois, about 50 miles southwest of Chicago near the eastern terminus of the Alliance pipeline. Since commencing operations in December 2000, ASLP [Aux Sable Limited Partnership] has processed over 7.2 trillion cubic feet of natural gas and has produced over 12 billion gallons of specification NGL products. The facility is capable of processing 2,100 million cubic feet per day of natural gas and can produce approximately 107,000 barrels per day of specification NGL products. **All of the gas delivered via the Alliance Pipeline is processed at ASLP's Channahon NGL Facility**.

http://www.auxsable.com/top-navigation/our-business/u-s-operations (emphasis added).

[7] Aux Sable Midstream is also owned 42.7% by Enbridge, 42.7% by Veresen, and 14.6% by Williams. http://www.auxsable.com/top-navigation/about-us/ownership.

[8] http://www.auxsable.com/top-navigation/our-business/u-s-operations Aux Sable's web site also provides:

> Aux Sable's Palermo Conditioning Plant commenced operation in February 2010 and is located 1.5 miles south of US Highway 2 on 74th Ave NW, near Palermo, North Dakota. The Plant receives gas from four gas gathering systems servicing nearby Bakken shale oil/gas production areas. The plant is designed to remove the heavier hydrocarbon compounds while leaving the majority of the natural gas liquids in the rich gas delivered into the Prairie Rose Pipeline, which is then delivered onto the Alliance Pipeline. The gas is eventually processed at Aux Sable's Channahon Fractionation and Extraction Facility. Aux Sable Midstream has constructed a Natural Gas Liquids truck unloading facility at its Palermo Conditioning Plant. The NGL mix will be injected into the Palermo Plant/Prairie Rose Pipeline System for delivery at Aux Sable's Channahon, Illinois Facility. The Truck Unloading facility started operations in July 2012.

Id.

In addition, Alliance receives North Dakota production via its Tioga lateral. As a result, North Dakota production which is transported by Alliance is exclusively processed by Aux Sable in Illinois because no one has been able to build a competing straddle plant.

Alliance has already announced that it is contracted full in part due to additional drilling in the Canadian Montney/Duverney resources, not due to incremental capacity dedicated to North Dakota. The dynamics of these resources have severe implications for North Dakota. In June 2014, Badlands was invited to participate in the Canadian Energy Research Institute ("CERI") conference in Calgary and, in large part because of the Montney/Duverney resources, all participants invariably agreed that Canada needs one or two new crackers to deal with all of the ethane coming online from the relatively new Montney and Duverney basins. However, no new "crackers" are currently planned. CERI then released an official report showing that there may be as much as 350,000 barrels per day of additional ethane production with no downstream use by 2020. Inevitably, this additional supply will find its way into the Alliance pipeline system and may restrain the ability of North Dakota producers to inject their rich gas into Alliance.

D. PROCEDURAL HISTORY

1. Alliance's Proposed Tariff Revisions

On May 29, 2015, Alliance, pursuant to NGA section 4, 15 U.S.C. § 717c and Part 154 of the FERC's regulations, filed revised tariff records that proposed a number of changes, most notably the removal of Authorized Overrun Service and crediting revenue from interruptible transportation service. But the proposed changes included other matters too, most notably the following addition to Section 20.1 of the General Terms and Conditions of Alliance's FERC tariff:

> Shipper warrants to Transporter that for all Shipper's Gas that is received by Transporter from Shipper at the Interconnect with **Alliance Pipeline Limited Partnership Receipt Point** and that is subject to a grant to **Aux Sable Liquid Products LP** of an option to extract and take title to all non-methane hydrocarbon constituents contained in such Gas, Shipper will be party to an **Extraction Agreement**.

(Emphasis added.). The bold terms are all defined in Alliance's FERC Gas Tariff.

Alliance Pipeline Limited Partnership ("Alliance Canada") is an upstream transporter and affiliate of Alliance.[9] Alliance Canada requires shippers, as a condition to transportation, to grant Aux Sable the option to extract and purchase natural gas liquids ("NGLs").[10] As a result, **all** gas currently received at the interconnection with Alliance Canada is subject to an Extraction Agreement.

Alliance's FERC Gas Tariff defines an "Extraction Agreement" as

> "a contract executed between a Shipper and Aux Sable whereby shipper grants to Aux Sable the **sole and exclusive** right to extract and take title to any non-methane hydrocarbon constituents contained in Shipper's Gas and which obligates Shipper to require any temporary or permanent assignment of capacity to be made expressly subject to such contract.[11]

Thus, when read together, Alliance Canada requires all shippers to enter into an **exclusive** extraction agreement with its affiliate, Aux Sable; the FERC tariff of Alliance reinforces this shipper obligation by defining the extraction agreement between a shipper and Aux Sable as **exclusive**; and revised GT&C Section 20.1 would require shippers to warrant that all gas

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[9] As noted above, Alliance Canada and Alliance are owned by the same companies. In addition, Alliance Canada and Alliance have the same officers. The Canadian and U.S. pipelines are operated as one system.

[10] *See* Alliance Canada's Firm Transportation Service Agreement, Article 5 & Schedule C. A Copy of Article 5 and Schedule C.

http://www.alliancepipeline.com/Business/Regulatory/Pages/TariffCDN.aspx

[11] Alliance FERC Gas Tariff, GT&C § 1 (emphasis added).

transported by Alliance Canada is subject to an **exclusive** extraction agreement with Aux Sable, even if the US shipper did not receive service from Alliance Canada.

2. FERC Proceedings

Following Alliance's May 29, 2015 tariff filing, several parties, including Badlands, intervened. On June 30, 2015, the FERC issued an order establishing an evidentiary hearing to address concerns with the Alliance's proposed tariff filing.[12] Various parties filed rehearing requests of the June 30 Order. In addition Badlands filed several pleadings responding to Alliance's claims Aux Sable's exclusive processing rights were not at issue.[13] On November 19, 2015, FERC issued a "Rehearing Order," which among other things confirmed that issues involving Alliance and the exclusive processing arrangement with its affiliate (Aux Sable) were set for hearing.[14]

Subsequently, a presiding administrative judge issued a procedural schedule, while on a separate track informal settlement negotiations commenced. On December 18, 2015, the Commission filed a motion to intervene, which was granted by the presiding on January 6, 2016. As a result, the Commission is a party to Alliance proceeding, with full rights to participate as it desires.

At this juncture, the parties and FERC staff have begun to conduct discovery. In addition, several settlement conferences have been held. But, <u>there is no settlement agreement,</u> not even an agreement in principle, not on transportation rates, nor several service issues, including the "Badlands issue." Any representation to the contrary is patently false.

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[12] Alliance Pipeline L.P., Docket No. RP15-1022-000, 151 FERC ¶ 61,271 (2015) ("June 30 Order").

[13] Copies of Badlands' FERC pleadings are attached as Exhibit C.

[14] Alliance Pipeline L.P., Docket No. RP15-1022-001, 153 FERC ¶ 61,195, PP 66-67 (2015) ("Rehearing Order").

IV.
THE EXCLUSIVE PROCESSING ARRANGEMENT BETWEEN ALLIANCE AND ITS AFFILIATE, AUX SABLE, IS ILLEGAL FOR SEVERAL REASONS

As noted above, two corporate families (Enbridge and Veresen) own and control **both** the Alliance pipeline system (both the Canadian and American pipelines) and Aux Sable, which extracts and processes natural gas liquids in Illinois. **All** Alliance shippers (including North Dakota production) exclusively utilize Aux Sable for processing because no one has been able to build a competing straddle plant. This exclusive processing arrangement between the pipeline and its affiliate is unlawful for the following reasons:

(1) It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable.

For the same reasons, is also anticompetitive. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize."

(2) FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

A. THE EXCLUSIVE PROCESSING ARRANGEMENT IS UNDULY DISCRIMINATORY AND ANTICOMPETITIVE

The Alliance/Aux Sable corporate family requires pipeline shippers to grant Aux Sable an exclusive right to process all gas transported by the pipeline. This confers an undue preference on Aux Sable and unduly discriminates against other processors.

The NGA prohibits rates, charges or classifications that are unduly preferential or unduly discriminatory. 15 U.S.C. §717c(b); *see also* 18 C.F.R. §284.7(b) (requiring nondiscriminatory access). Undue preference and undue discrimination are two sides of the same coin. In essence, undue discrimination is an unjustified difference in treatment of similarly-situated customers.[15]

[15] *Transwestern Pipeline Co.*, Opinion No. 238-A, 36 FERC ¶ 61,175, p. 61,433 (1986).

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Here, the two different classes of natural gas processors are (1) Aux Sable and (2) every other processer. The only meaningful difference between Aux Sable and other natural gas processors is that the owners of Alliance own more than 85% of Aux Sable. The Alliance corporate family has exercised its market power to vest Aux Sable with an undue preference, that is, by forcing shippers to provide Aux Sable with the exclusive right to process gas, the pipeline's affiliate is treated different from all other processors. Conversely, all unaffiliated processors are prevented from performing any services on gas transported by Alliance.

Furthermore, the exclusive processing arrangement is anticompetitive. The exclusivity arrangement evinces a commercial framework in which Alliance/Aux Sable control the interstate transportation and processing of natural gas. The Alliance corporate family seeks to prevent competition among natural gas processors by providing Aux Sable with the exclusive right to process gas on the Alliance system. The proposed change would extinguish competition on the Alliance pipeline system, thereby harming natural gas processors and shippers. Given that "discrimination which is anti-competitive in effect is presumptively undue,"[16] the exclusive processing arrangement is unduly discriminatory and must be rejected.

B. THE EXCLUSIVE PROCESSING ARRANGEMENT IS CONTRARY TO FERC'S INTERCONNECTION POLICY

Alliance's exclusive processing arrangement with its corporate affiliate violates the FERC's pipeline interconnection policy and GT&C Section 32 of Alliance's tariff. Specifically, in *Tennessee Gas Pipeline, L.L.C.*, the FERC rejected an exclusive processing arrangement with a pipeline affiliate.[17] Tennessee's transmittal letter to the tariff filing in question noted: "Tennessee entered into a straddle agreement with its affiliate, El Paso Midstream Group Inc.

[16] *Electric & Water Plant Bd. of the City of Frankfort, Kentucky v. Kentucky Utils. Co., et al.*, 12 FERC ¶ 61,004, p. 61,008 (1980).

[17] Docket No. RP13-464-000, 143 FERC ¶ 61,128, P 58 (2013).

('Midstream). Under the straddle agreement, Midstream will have the exclusive right to construct one or more straddle plants . . . ."[18] The FERC rejected the exclusive processing arrangement and explained:

> Applying that standard here, we find that Tennessee's agreement with Midstream [the affiliated processor] violates this policy by declaring, *ab initio*, that Tennessee shall not consider any offers to interconnect other processing plants with the Rich Gas Line, regardless of their potential benefits to shippers, the general public, or even Tennessee itself.[19]

Tennessee never tried anything as bold as Alliance -- to embed references to the affiliate exclusivity arrangement in its tariff. As such, the Alliance situation is worse than Tennessee!

Alliance has manifest confusion on a related matter. It claims to have "a provision in its tariff that provides the opportunity for interconnection consistent with FERC's interconnection policy." Agreed. But Tennessee had a similar provision.[20] That is the point – the interconnection provision would be rendered meaningless, if processing could not be achieved after interconnection!

The FERC's reasoning in *Tennessee* is equally applicable to the instant proceeding. Therefore, the Alliance/Aux Sable existing exclusive processing arrangement must be rejected.

V.
BADLANDS SEEKS ONLY TO BE TREATED FAIRLY AND OPERATE ON A LEVEL PLAYING FIELD

In this proceeding, Badlands simply desires to be treated fairly and operate on a level playing field. To date, however, Badlands has not been treated fairly and is required to operate on playing field slanted in favor of the Alliance/Aux Sable corporate family. Specifically, when

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[18] Tennessee's Transmittal Letter, Docket No. RP13-464-000 (Jan. 18, 2013).

[19] *Tennessee*, 143 FERC ¶ 61,128, P 59.

[20] 143 FERC ¶ 61,128 at P 58 ("The Commission finds that Tennessee's agreement with Midstream, which Tennessee has described to the Commission but not filed in this docket . . . also appears to violate Tennessee's own tariff language on interconnections.").

Badlands approached Alliance to explore an interconnection in North Dakota to facilitate construction of a straddle plant to extract ethane, Alliance essentially said, "Don't bother. Aux Sable has the exclusive right to extract NGLs transported on our system. Go talk to them." Badlands then talked to Aux Sable, but Aux Sable has no ethane it is willing to make available to Badlands at market rates.

At the Commission's work session on Tuesday, January 26, 2016, it was represented that Alliance was willing to "neutralize" its tariff and simply require that shippers enter into a processing agreement. Assuming *arguendo* that Alliance would be willing to cleanse its tariff of all direct and indirect references to Aux Sable; **that does not solve the problem**. The gravamen of the complaint is the already existing exclusivity forced upon shippers by Alliance in favor of its corporate affiliate, Aux Sable. Under the existing regime, the Alliance corporate family has required its shippers to enter into exclusive processing agreements with Aux Sable. Thus, changing the tariff, does not alter the fact that shippers have already granted Aux Sable has exclusive processing rights. More is needed if there is to be a level playing field. More is needed for ethane to be made available to Badlands. In short, more is needed for Badlands to be treated fairly.

Alliance and Aux Sable are each owned and controlled by the same two corporate families. All that is needed here is for the Alliance/Aux Sable corporate family to

1. allow Badlands to construct a straddle plant on the Alliance pipeline, upstream of Aux Sable's Channahon NGL extraction facility, so that Badlands could extract and pay a market price for a reasonable amount of ethane; or

2. sell at market price a reasonable amount of ethane to Badlands.

Either option would be fair and level the playing field.

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VI.
THE PSC'S SIGNIFICANT INTEREST IN ALLIANCE AND BADLANDS

As a result of their unduly discriminatory and anticompetitive actions, the Alliance/Aux Sable corporate family is attempting to thwart the Badlands' development of a $4 billion plastics plant in North Dakota. Badlands' plant would be the largest private investment in the State's history, and Badlands is comprised of a majority (in number) of North Dakotan investors. A portion of the gas transported by Alliance is produced in North Dakota and should, therefore, be available to further North Dakota's interests. Against this backdrop, the Commission should support Badlands in the FERC proceeding and reject Alliance's attempts to confuse the issue by focusing on minor language changes to its FERC tariff.

Indeed, NDCC § 49-02-17 requires that when the Commission discovers "that the rates charged by any public utility . . . on interstate business are unjust or unreasonable or that the rates, rules, or practices of such utility:

> 1. *Discriminate unjustly against the citizens, industries, or interests of this state*;
>
> 2. *Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states*; or
>
> 3. *Are* levied, laid, or *otherwise in violation of federal law, rulings, orders, or regulations*, **the commission immediately shall call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules, or practices.**

(Emphasis added). The Alliance/Aux Sable exclusive processing arrangement discriminates against (1) North Dakota citizens who are investors in Badlands, (2) the State's nascent polyethylene industry, which Badlands is spearheading, and (3) the State's interests in developing a value-added petrochemical industry. Similarly, the exclusive processing arrangement places Badlands' North Dakota investors, the State's nascent polyethylene industry, and the largest single private investment in the State's history at an unreasonable disadvantage compared to Aux Sable's processing in Illinois and competing polyethylene manufacturers in Illinois. Moreover, as noted above, the exclusive processing arrangement violates federal statutes and FERC rules: the exclusive processing arrangement is unduly discriminatory in violation of the NGA, is anticompetitive in violation of the Sherman Act, and violates the FERC's interconnection policy as articulated in *Tennessee*. As such, NDCC § 49-02-17 compels the Commission to urge the Alliance/Aux Sable corporate family to change the exclusive processing practice.

At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement. Stated differently, all that would be required at this stage of the FERC proceeding would be for the Commission to support Badlands in settlement discussions. This alone could help resolve the dispute.

If the settlement negotiations prove unfruitful, another North Dakota statute then comes into play. NDCC § 49-02-18 provides:

> Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination, unreasonableness, or unjustness, within a reasonable time, the **commission shall take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices.** If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

(Emphasis added). Accordingly, if the discriminatory exclusive processing arrangement employed by Alliance/Aux Sable is not resolved through settlement, then NDCC § 49-02-18 provides that "the commission "**shall** take the necessary action in appropriate proceeding to obtain relief . . . ." The word "shall" imposes an affirmative obligation on the part of the Commission. And the "appropriate proceeding" is none other than FERC Docket No. RP15-

1022-000, where the unduly discriminatory, exclusive processing arrangement is currently being litigated.[21]

Finally, Badlands notes that NDCC § 38-08-03 provides: "Waste of oil and gas is prohibited." Badlands submits that pipeline and affiliated processing business models, which require North Dakota produced ethane to be shipped out of State for a loss, violates NDCC § 38-08-03, especially when Badlands is developing a polyethylene plant that would use North Dakota ethane as a feedstock and result in North Dakota producers "making money" on ethane sales, instead of "losing money" on out-of-state ethane sales.

VII.
PROPOSED RESOLUTION

In light of the above, Badlands urges the Commission to adopt the following resolution:

WHEREAS, the North Dakota Public Service Commission ("commission"), recognizes that NDCC § 49-02-17 requires it to take certain action in the context of unreasonable rates, rules, and practices affecting interstate commerce: "Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the that the rates, rules, or practices of such utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;

2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states;

3. Are levied, laid, or otherwise in violation of federal law, rulings, orders, or regulations, the commission shall immediately call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules and practices." NDCC § 49-02-17;

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[21] It is also worth noting that Badlands' proposed straddle plant would be subject to the Commission's siting jurisdiction. The Alliance/Aux Sable corporate family's exclusive processing arrangement creates conditions that prevent the Commission from exercising its jurisdiction. The Commission's involvement in Docket No. RP15-1022-000 could, therefore, be justified as protecting its jurisdiction over the siting of Badlands' straddle plant.

WHEREAS, the Commission has filed motion to intervene (which has been granted) in a Federal Energy Regulatory Commission ("FERC") Gas Tariff proceeding initiated by Alliance Pipeline L.P. ("Alliance") , Docket No. RP 15-1022-000, such intervention based on the Commission's constitutional and statutory authority to investigate and take action necessary to protect citizens, industries, and interests of the state;

WHEREAS, there are industries, customers and potential business that may suffer significant impacts involving issues involving the Alliance tariff filing, in particular an exclusive processing arrangement between Alliance and its affiliate, Aux Sable Liquid Products, LP ("Aux Sable");

WHEREAS, as a public representative of retail customers and state interests of North Dakota, the Commission has a vital and direct interest in how the Alliance tariff operates and the exclusive processing arrangement between Alliance and Aux Sable;

WHEREAS, the State of North Dakota has a strong and vital interest in adding value to regional natural gas, promoting economic development and diversification of the state's economy, avoiding both resource and economic waste, growing and expanding both dry and wet gas value-added enterprises, and fostering a business climate that promotes access to pipelines and processors of natural gas at fair market rates;

WHEREAS, Badlands NGLs, LLC ("Badlands"), has complained to the Commission, pursuant to NDCC § 49-02-17, that the Alliance tariff structure, exclusive processing arrangement between Alliance and Aux Sable, and associated contracts constitute a set of rules and practices that discriminate unjustly in favor Aux Sable, such that this affiliate enjoys an exclusive arrangement with Alliance and its shippers to the exclusion of Badlands; and further that this places the State of North Dakota at an unreasonable disadvantage with respect to other states downstream from North Dakota along the Alliance Pipeline who otherwise enjoy the benefits of processing and adding value to this interstate commodity; and finally, that such facts, if demonstrated with sufficient proof in these proceedings, may constitute a violation of federal law, rulings, orders, or regulations;

WHEREAS, based the investigation performed by the Commission to date, including the review of pleadings filed at FERC, Badlands' claims appear to be supported;

RESOLVED, that the Commission is empowered and obligated to continue participation in the FERC proceedings in Docket No. RP15-1022 (by virtue of its intervenor status) in order to encourage the full development and determination of the facts by FERC as alleged by Badlands, to help ensure a just and timely result for North Dakota and its citizens, whether by a settlement entered into by mutual consent of the parties, or by full and final adjudication, and to fully discharge the Commission's duties under the North Dakota Century Code as outlined above.

VIII.
CONCLUSION

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Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane. The Alliance pipeline travels through North Dakota and transports a rich gas stream of methane and NGLs, including ethane. But Badlands has been unsuccessful in its attempts to obtain ethane transported by Alliance.

Alliance's FERC tariff requires every shipper to "warrant" – that is, unconditionally guarantee – that all gas received from Alliance's upstream affiliate (Alliance Canada) will be processed exclusively by Alliance's downstream affiliate (Aux Sable). Furthermore, **all** Alliance shippers have entered into agreements granting Aux Sable the exclusive right to extract and take title to all the shippers' NGLs.

The exclusive processing arrangement between Alliance and its affiliate Aux Sable, and other issues, is the subject of an evidentiary hearing at FERC in Docket No. RP15-1022-000. There is no settlement agreement, not on rates or conditions of service; there is not even a settlement in principle.

At FERC, Badlands has established that the exclusive processing arrangement between Alliance and Aux Sable is illegal under federal law. It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable. For the same reasons, is also anticompetitive. Furthermore, the exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

The Commission is required by NDCC § 49-02-17 to take issue with the Alliance/Aux Sable exclusive processing arrangement it discriminates against North Dakotans who are investors in Badlands, disadvantages the State's nascent polyethylene industry interests in developing a value-added petrochemical industry. At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement.

Finally, any offer by Alliance to "neutralize" its FERC tariff (by removing direct and indirect references to Aux Sable) would be a hollow gesture, given that each and every Alliance shipper has entered into an extraction agreement, which provides Aux Sable with the exclusive right to extract and take title to all NGLs (including ethane).

WHEREFORE, Badlands respectfully requests that the Commission accept these Comments and approve the Resolution set forth above.

Respectfully submitted,

William J. Gilliam
William J. Gilliam
CEO, Badlands NGLs, LLC

Dated: January 27, 2016

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LIST OF EXHIBITS

Exhibit A: Template Extraction Agreement between Aux Sable and Alliance Shippers

Exhibit B: Map Depicting Alliance's Pipeline Route

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EXHIBIT A

EXTRACTION AGREEMENT

THIS EXTRACTION AGREEMENT made effective this ___ day of __________, 20___

BETWEEN:

AUX SABLE LIQUID PRODUCTS LP, a limited partnership formed under the laws of Delaware, ("Aux Sable")

- and -

[Shipper], a [status] formed under the laws of [jurisdiction] (the "Shipper")

RECITALS:

A. Alliance Pipeline Limited Partnership ("**Canadian Transporter**") and Alliance Pipeline L.P. ("**U.S. Transporter**") (together, "**Alliance**") own a lateral and mainline pipeline system (the ""**Alliance System**"") designed to transport rich natural gas from Western Canada to the Chicago area.

B. Aux Sable has contracted with Alliance to perform heat content management services. Such contract services are provided by Aux Sable to Alliance through Aux Sable's extraction of NGLs contained in natural gas transported on the Alliance System prior to the delivery of such gas to systems downstream of the Alliance System.

C. Pursuant to Canadian Transporter's Tariff and the Canadian Extraction Agreement, Canadian Shipper has granted, assigned and relinquished the Extraction Rights to Aux Sable in relation to Canadian Gas, and any sale or transfer of the Canadian Gas is required to be subject to such grant.

D. Shipper desires to purchase or receive, from a Canadian Shipper, Canadian Gas that is subject to the pre-existing grant to Aux Sable of the Extraction Rights.

NOW THEREFORE, in consideration of the premises and the respective covenants and agreements of the Parties herein contained, the sufficiency of which is expressly acknowledged, the Parties agree as follows:

1. In this Agreement, including the recitals, words and phrases defined in the recitals have the meanings attributed to them therein, and the following words and phrases have the following meanings:

   "**Agreement**" means this Extraction Agreement.

"**Aux Sable**" means the Party referred to as Aux Sable, and includes (i) any of its successors or assigns in respect of this Agreement, and (ii) Aux Sable Extraction LP for the purposes noted in Section 10 hereof.

"**Canadian Gas**" means any natural gas transported by a Canadian Shipper on the Canadian Pipeline from time to time, or pursuant to, or in connection with, any Transportation Arrangement.

"**Canadian Extraction Agreement**" means the extraction agreement between Canadian Shipper and Aux Sable whereby Canadian Shipper has granted, assigned and relinquished the Extraction Rights to Aux Sable.

"**Canadian Pipeline**" means the Canadian Transporter's pipeline and associated facilities used to transport natural gas from various points in British Columbia and Alberta to a point of interconnection with the U.S. Pipeline owned by the U.S. Transporter at the Canadian-United States border, as the same may be modified from time to time.

"**Canadian Shipper**" means, with respect to any particular Transportation Arrangement, the entity which enters into any agreement or arrangement under which the shipper has the right to have transported on the Canadian Pipeline owned by the Canadian Transporter such natural gas as is delivered to the U.S. Pipeline on behalf of the Canadian Shipper under any Transportation Arrangement.

"**Extraction Facilities**" means either:

(a) the existing extraction and fractionation facilities located at the Alliance delivery header in Channahon, IL; or

(b) any other extraction and fractionation facilities owned and operated by Aux Sable

that are capable of extracting NGLs from natural gas transported on the Alliance System.

"**Extraction Rights**" means the sole and exclusive right to extract and take title to any NGLs;

"**NGLs**" means ethane, propane, normal butane, isobutane, pentanes plus and condensate, or any of them, or any mixture of any of them, and includes any other substances that may be incidentally recovered therewith on extraction from natural gas.

"**Parties**" means Aux Sable and the Shipper, and "Party" means one of the Parties.

"**Shipper**" means the Party referred to as Shipper, and includes any of its successors or assigns under any Transportation Arrangement.

"**Shipper's Gas**" means any natural gas transported on the U.S. Pipeline that is purchased or otherwise received from Canadian Shipper from time to time under, or pursuant to, or in connection with, any Transportation Arrangement.

"**Tariff**" means the terms and conditions under which U.S. Transporter will transport natural gas on the U.S. Pipeline pursuant to a Transportation Arrangement, as the same may be amended or approved from time to time by the Federal Energy Regulatory Commission or any successor.

"**Transportation Arrangement**" means any agreement or arrangement under which Shipper has the right to have transported on the U.S. Pipeline natural gas that is sourced from Canada and is subject to a pre-existing grant to Aux Sable of an option to extract and take title to all NGLs in such gas, and any assignment or capacity release thereof; provided, however, that if the U.S. Transporter should in the future start providing firm or interruptible transportation service on the U.S. Pipeline on a basis that does not involve a correlative grant of NGL extraction rights to Aux Sable for Shipper's Gas that is sourced in Canada and is subject to a pre-existing grant of an extraction option to Aux Sable, the term Transportation Arrangement as used herein will not include the new agreements or arrangements under which such new service is provided.

"**U.S. Pipeline**" means the pipeline system owned by U.S. Transporter that transports natural gas from a point of interconnection with the Canadian Pipeline at the Canada-U.S. border to the Chicago area, as the same may be modified from time to time.

2. Shipper hereby acknowledges that the Extraction Rights in relation to Shipper's Gas are subject to a pre-existing grant of such rights to Aux Sable. Shipper represents and warrants that it has done nothing to alienate, encumber or impair such grant of the Extraction Rights, and covenants and agrees that it will not at any time purport to grant to any other party any right to extract NGLs from any of Shipper's Gas or otherwise do anything that might interfere with or adversely affect the Extraction Rights conferred on Aux Sable or Aux Sable's ability to exercise those Extraction Rights. Any sale or transfer of Shipper's Gas will be subject to the pre-existing grant of Extraction Rights to Aux Sable. To the extent that Shipper is possessed of any Extraction Rights in relation to Shipper's Gas, Shipper hereby grants to Aux Sable the sole and exclusive right to extract and take title to any NGLs in Shipper's Gas.

3. If and whenever Aux Sable extracts NGLs from Shipper's Gas, it will deliver or cause to be delivered, for the account of Shipper, a quantity of make-up gas having a heating value equal to the amount by which the heating value of Shipper's Gas is reduced as a result of the extraction of such NGLs.

   The delivery of such make-up gas will be effected at such times and in such manner as to ensure that it does not:

(a) give rise to any energy imbalance between any of Shipper or U.S. Transporter; or

(b) affect, vary or alter the amounts payable by Shipper for transportation service under any Transportation Arrangement.

Aux Sable will be responsible for all royalties, overriding royalties, taxes, levies and other burdens applicable with respect to such make-up gas prior to or upon delivery thereof for the account of Shipper, and Aux Sable covenants and agrees that all such make-up gas will be free from any liens, encumbrances or adverse claims of any nature whatsoever at the time of delivery thereof for the account of Shipper.

Shipper acknowledges and agrees that the provision of make-up gas in accordance with this Section 3 will constitute full compensation for any NGLs extracted from Shipper's Gas pursuant to this Agreement.

4. Nothing in this Agreement will:

   (a) obligate Aux Sable to extract any NGLs from any of Shipper's Gas;

   (b) prevent Aux Sable from re-injecting any NGLs extracted from Shipper's Gas;

   (c) obligate Shipper to purchase or receive any natural gas on the U.S. Pipeline; or

   (d) prevent Shipper from extracting NGLs upstream or downstream of the Alliance System.

5. Aux Sable may construct additional or replacement Extraction Facilities on the Alliance System. In such case, Shipper agrees to do all such things as may be reasonably requested by Aux Sable to facilitate the exercise of Aux Sable's rights under this Agreement.

   Without limitation, Shipper hereby authorizes and directs U.S. Transporter:

   (a) to make all of Shipper's Gas available to Aux Sable at the inlet to any Extraction Facilities constructed in the United States, if and to the extent permitted by the terms of the Tariff; and

   (b) to receive all residue gas delivered by Aux Sable for the account of Shipper if and to the extent permitted by the terms of the Tariff.

6. Shipper hereby authorizes and directs U.S. Transporter to provide Aux Sable with all such information regarding Shipper's Gas as Aux Sable may from time to time reasonably request in connection with this Agreement.

7. Title to any NGLs extracted from Shipper's Gas at any Extraction Facilities will pass to Aux Sable upon extraction thereof. Shipper will be responsible for all royalties, overriding royalties, taxes, levies and other burdens applicable with respect to such NGLs prior to or upon the passing of title thereto to Aux Sable, and Shipper covenants and agrees that all such NGLs will be free from any liens, encumbrances

or adverse claims of any nature whatsoever at the time title thereto passes to Aux Sable.

8. If Shipper assigns any or all of its rights under any of its Transportation Arrangements, Shipper will:

   (a) in the case of a temporary assignment, ensure that such assignment is made expressly subject to the terms of this Agreement, such that the assignee's rights are subject to Aux Sable's rights hereunder; and

   (b) in the case of a permanent assignment, cause its assignee to execute and deliver to Aux Sable all such written assurances as may be reasonably requested by Aux Sable to confirm that such assignee is bound by the terms of this Agreement. Shipper will not assign any of its rights and obligations under any Transportation Arrangement except in compliance with the requirements of this Section 8, and Shipper hereby authorizes and directs U.S. Transporter to cooperate with Aux Sable in enforcing the requirements of this Section 8.

9. Aux Sable may assign any or all of its rights and corresponding obligations under this Agreement as security or otherwise. Shipper may only assign its rights and obligations under this Agreement in conjunction with a corresponding assignment of rights and obligations under its Transportation Arrangement.

10. Shipper acknowledges that Aux Sable has entered into this Agreement both on its own behalf and as agent on behalf of Aux Sable Extraction LP, a Delaware limited partnership, ("ASE") with respect to rights and obligations relating to the extraction of NGLs at ASE's Extraction Facility in Channahon, Illinois, and that the term "Aux Sable" shall be construed accordingly.

11. This Agreement will remain in full force and effect for the term of each Transportation Arrangement and a period of two (2) years after the expiry or termination of every Transportation Arrangement.

12. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may only be modified or amended by written agreement executed by both Parties.

13. No waiver of any right under or in respect of this Agreement will be effective unless in writing, and any waiver so given will extend only to the particular right so waived and will not limit or affect any rights with respect to any other or future matter. The failure of either Party to insist upon the strict performance of any provision of this Agreement, or to take advantage of any right hereunder, will not be construed as a waiver of any such provision or right.

14. The invalidity or unenforceability, for any reason, of any part of this Agreement will not prejudice or affect the validity or enforceability of the remainder.

15. Each of the Parties will from time to time execute and deliver all such further documents and perform all such further acts and things as may be reasonably required to more fully assure the carrying out of the intent and purpose of this Agreement.

16. This Agreement will be construed in accordance with and be subject to the laws of the State of Illinois, and the laws of the United States of America having application therein, without recourse to any laws governing conflict of laws. Neither Party will institute any action, suit or proceeding with respect to any matter arising under or out of this Agreement other than in a Court having jurisdiction in the judicial district of Chicago. In that regard, the Parties hereby irrevocably submit to the jurisdiction of such Court in the event of any such action, suit or other proceeding by the other Party.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the day first above written.

AUX SABLE LIQUID PRODUCTS LP, by its Managing General Partner, Aux Sable Liquid Products Inc.	[SHIPPER]
Per: ______________________	Per: ______________________
Name:	Name:
Title:	Title:

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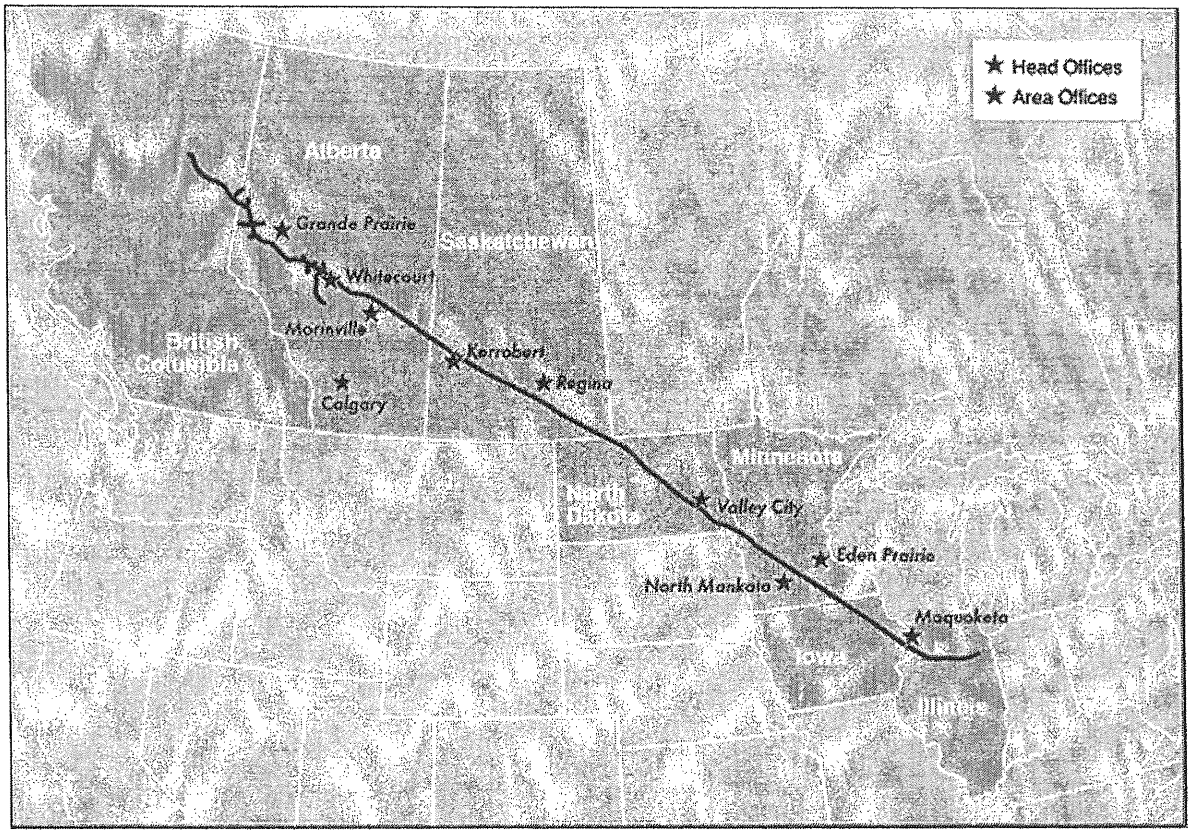
EXHIBIT B

MAP DEPICTING ALLIANCE'S PIPELINE ROUTE



http://ips.alliance-pipeline.com/

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UNITED STATES OF AMERICA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION

Case No. PU-15-788

COMMENTS OF BADLANDS NGLS, LLC

Badlands NGLs, LLC ("Badlands") respectfully submits these comments to the North Dakota Public Service Commission ("Commission") to address issues raised during the Commission's January 26, 2016 work session involving a proceeding currently pending before the Federal Energy Regulatory Commission ("FERC") – *Alliance Pipeline LP*, Docket No. RP15-1022-000. At issue in the FERC proceeding, among other things, is the exclusive processing arrangement between Alliance Pipeline LP ("Alliance") and its affiliate, Aux Sable Liquid Products LP ("Aux Sable"). Specifically, the Alliance corporate family requires all shippers of Canadian-sourced gas to provide Aux Sable with the exclusive right to extract natural gas liquids ("NGLs") from the rich gas stream transported by Alliance.

In addition, Alliance has two North Dakota receipt points -- the Tioga lateral and the Prairie Rose pipeline, the latter delivering gas that is gathered and processed by the Palermo plant, both of which are owned by the Aux Sable corporate family. All North Dakota production transported by Alliance is processed by Aux Sable in Illinois because no one has been able to build a competing straddle plant. In short, Alliance's current tariff and the existing exclusive processing arrangements with Aux Sable have already done their damage. Just modifying Alliance's tariff language will not undo the harm.

Because of the exclusive processing arrangement, Badlands has been unable to obtain ethane (an NGL) that Alliance transports through North Dakota. Badlands, its North Dakota investors, and the State's interests have been harmed by the exclusive processing arrangement. As a result, Badlands urges the Commission, in compliance with North Dakota statutes, adopt the proposed resolution set forth below and support Badlands' position at FERC, particularly in ongoing settlement negotiations.

In addition, the FERC Trial Staff has authorized Badlands to state the following:

> Settlement negotiations are ongoing in the Alliance Pipeline L.P. (Alliance) proceeding, in Docket No. RP15-1022 at the Federal Energy Regulatory Commission (FERC). A settlement has not been reached in this proceeding. One of the issues in this case is the inability of Badlands NGL's LLC (Badlands) to secure access to the natural gas stream transported by Alliance for purposes of extracting and processing the ethane component of the natural gas stream.
>
> The FERC Trial Staff believes that Badlands inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may be inconsistent with the FERC's natural gas pipeline open access interconnection/transportation rules, regulations and precedent. The FERC Trial Staff further believes that Badlands' inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may create issues of undue discrimination and undue preference under the Natural Gas Act. Finally, long-standing FERC precedent requires the FERC to consider the impact on competition of its actions. The FERC Trial Staff believes that the facts underlying Badlands' inability to secure access to the natural gas stream for purposes of extracting and processing the ethane may constitute anti-competitive conduct.

In support of these Comments, Badlands states as follows:

I.
ISSUES PRESENTED

1. The Alliance corporate family forces its shippers to grant its affiliate, Aux Sable, the exclusive right to extract and take title to all NGLs transported by the pipeline. Does this exclusive processing arrangement between Alliance and Aux Sable Liquid violate federal law?

Yes. The exclusive processing arrangement violates the Sections 4 and 5 of the Natural Gas Act, by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable. It is also anticompetitive: the Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Furthermore, the FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

2. A North Dakota statute requires the Commission to urge an interstate pipeline to change practices that discriminate against or unreasonably disadvantage State citizens, interest or industries, when such practices are in violation of federal law. The Alliance/Aux Sable exclusive processing arrangement discriminates against and disadvantages North Dakotans and State interests; it also violates federal law. Is the Commission required to urge Alliance and Aux Sable to remedy the harm from their exclusive processing arrangement?

Yes. Section 49-02-17 of the North Dakota Century Code ("NDCC") requires Commission action. The Alliance/Aux Sable exclusive processing arrangement discriminates against (1) North Dakota citizens who are investors in Badlands, (2) the State's nascent polyethylene industry, which Badlands is spearheading, and (3) the State's interests in developing a value-added petrochemical industry. Similarly, the exclusive processing arrangement places Badlands' North Dakota investors, the State's nascent polyethylene industry, and the largest single private investment in the State's history at an unreasonable disadvantage compared to Aux Sable's processing in Illinois and Badland's competing polyethylene manufacturers in Illinois. Moreover, as noted above, the exclusive processing arrangement violates federal statutes and FERC rules. As such, NDCC § 49-02-17 compels the Commission to urge the Alliance/Aux Sable corporate family to change the exclusive processing practice.

At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the

Alliance/Aux Sable corporate family's exclusive processing arrangement. Stated differently, all that would be required at this stage of the FERC proceeding would be for the Commission to support Badlands in settlement discussions. This alone could help resolve the dispute.

3. **Alliance's FERC tariff requires shippers to warrant that all Canadian gas is subject to an exclusive processing arrangement with Aux Sable. Other Alliance tariff provisions reference Aux Sable's exclusive right to extract and take title to NGLs. If Alliance were to "neutralize" these tariff provisions by removing the reference to Aux Sable, would the Commission still be compelled under NDCC § 49-02-17 to urge additional remedies?**

Yes. First, the Commission should note that there is no "settlement agreement" as represented by Alliance to the Commission. There have only been discussions of options. If Alliance offered to, and in fact did, neutralize its tariff by removing all direct and indirect references to Aux Sable, there would still be a problem. As required by prior and existing tariffs, **all** Alliance shippers have already executed Extraction Agreements with Aux Sable. The current tariff and existing exclusive processing arrangement have already completed the damage; that is the gravamen of the complaint. Attached as Exhibit A to this pleading is the Template Extraction Agreement, which was used as a model for every Alliance shipper's Extraction Agreement with Aux Sable because no one has been able to build a competing straddle plant.[1]

A few key provisions merit mention. Section 1 defines "Extraction Rights" as "the sole and exclusive right to extract and take title to any NGLs." Section 2, in pertinent part, provides:

[1] https://www.alliancepipeline.com/Business/OurServices/Pages/default.aspx

> Shipper represents and warrants that it has done nothing to alienate, encumber or impair such grant of Extraction Rights, and covenants and agrees that it will not at any time purport to grant to any other party any right to extract NGLs from Shippers Gas or otherwise do anything that might interfere with or adversely affect the Extraction Rights conferred on Aux Sable or Aux Sable's ability to exercise these extraction rights.

And, Section 11 provides that the term of the Extraction Agreement lasts until two (2) years after the expiration or termination of the shipper's transportation agreement. As such, Alliance's shippers have already provided Aux Sable with exclusive extraction rights and warranted that they will not impair Aux Sable's exclusive extraction rights. Any offer by Alliance to neutralize its tariff would be a hollow gesture: Aux Sable would still have exclusive rights to extract all NGLs from all gas transported by Alliance.

II.
EXECUTIVE SUMMARY

Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane, the latter to be used as a feedstock. The Alliance pipeline travels through North Dakota, picks up North Dakota gas at the Tioga lateral and Prairie Rose pipeline (owned by an affiliate of Aux Sable), and transports a rich gas stream of methane and NGLs, including ethane. Badlands' attempts to obtain ethane transported by Alliance have been rebuffed. Alliance's FERC tariff requires every shipper to "warrant" – that is, unconditionally guarantee – that all gas received from Alliance's upstream affiliate will be processed exclusively by Alliance's downstream affiliate. Further compounding the problem, **all** Alliance shippers (whose gas was sourced in Canada) have entered into extraction agreements providing Aux Sable with the exclusive right to extract and take title to all the shipper's NGLs. All North Dakota production transported by

Alliance is also processed by Aux Sable because no one has been able to build a competing straddle plant.

The exclusive processing arrangement between Alliance and its affiliate Aux Sable, and other issues, is the subject of an evidentiary hearing at FERC in Docket No. RP15-1022-000. The litigation is currently in the discovery phase, but settlement negotiations are also being conducted. There is no settlement agreement, not on rates or conditions of service. There is not even a settlement in principle. Any representation to the contrary is inaccurate.

At FERC, Badlands has established that the exclusive processing arrangement between Alliance and Aux Sable is illegal under federal law. It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable. For the same reasons, is also anticompetitive. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Furthermore, FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

Under NDCC § 49-02-17, the Commission is required take issue with the Alliance/Aux Sable exclusive processing arrangement because it (1) discriminates against North Dakota citizens who are investors in Badlands, the State's nascent polyethylene industry, which Badlands is spearheading; (2) places these North Dakota interests at an unreasonable disadvantage, compared to Illinois processing (by Aux Sable) and competing polyethylene manufacturers; and (3) violates federal statutes and FERC rules. The Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement.

Moreover, any offer by Alliance to "neutralize" its FERC tariff (by removing direct and indirect references to Aux Sable) would be a hollow gesture, given that each and every Alliance shipper has entered into an extraction agreement, which provides Aux Sable with the exclusive right to extract and take title to all NGLs (including ethane). At this juncture, it is Alliance's exclusive processing arrangement with Aux Sable that requires remedy, not just the pipeline's tariff language.

Finally, Alliance has suggested that it is only a pipeline transporter and cannot provide Badlands with any ethane. That dog won't hunt. Admittedly, the shippers own the gas. But the Alliance corporate family has required its shippers to exclusively use Aux Sable for all NGL extraction and processing. And Alliance's owners also own and control Aux Sable. In short, the Alliance corporate family makes ethane available to Aux Sable, but only to Aux Sable.

III.
BACKGROUND

A. ETHANE

When produced, especially from shale formations, natural gas is very rich in NGLs: one thousand cubic feet of raw natural gas may contain approximately eight to twelve gallons of NGLs, of which more than 40% is ethane (C_2H_6). In short, there are only two ways to use ethane: (1) blend it with a natural gas stream in a pipeline and sell it Btu or heat content and (2) use it as a petrochemical feedstock.

The ethane removed by a processing plant can be blended in with the dry gas and transported by interstate natural gas pipelines. In this case, the heat content of ethane is 1775 Btu/cf and methane 950 Btu/cf. For operational and safety reasons, most interstate natural gas pipelines typically have a maximum heat content of 1100 Btu/cf. As a result, the natural gas stream of most interstate pipeline can only contain a modest amount of ethane.[2]

B. BADLANDS

Badlands is a limited liability company organized and existing under the laws of Delaware. Its principal place of business is located at 1999 Broadway, Denver, Colorado 80202. Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane, the latter to be used as a feedstock. Specifically, Badlands' facility will (1) convert ethane gas to low density and high density plastics which are used to make a wide range of end products for consumers and industry; (2) be able to produce up to 4.4 billion pounds of polyethylene annually; (3) will result in thousands of new construction jobs and ultimately employ 500 highly trained people in manufacturing, marketing, administrative, safety, financial and executive positions; and (4) be the single largest private equity project in the history of North Dakota. This does not take into account the likelihood of downstream plastic molding and compounding companies siting in North Dakota, or benefits to existing North Dakota companies from locally available polyethylene, such as a PE pipe compounder in Fargo with whom Badlands has been in communication. And, significantly, the majority of Badlands investors are North Dakotans.

[2] As noted below, Alliance is unique; it transports a rich gas stream that contains NGLs, including ethane.

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C. THE ALLIANCE CORPORATE FAMILY

"Alliance is an open-access interstate natural gas pipeline that . . . extends from an interconnection with Alliance Pipeline Limited Partnership ("Alliance Canada") at the U.S.-Canadian border at Renville County, North Dakota to . . . eight delivery points in the competitive Chicago, Illinois market area."[3] The Alliance pipeline traverses diagonally though North Dakota, entering the northwestern portion of the State and exiting in the southeastern corner.[4] Alliance transports rich gas which contains natural gas liquids (NGLs); that is, natural gas stream requires processing prior to commercial and residential consumption. Two corporate families (Enbridge and Veresen) own and control both the Alliance pipeline system (both the Canadian and American pipelines) and Aux Sable,[5] which exclusively extracts and processes in Illinois all natural gas liquids (NGLs) transported by Alliance.[6]

[3] May 29 Transmittal Letter at 1.

[4] A map depicting the Alliance pipeline route is attached as Exhibit B.

[5] Alliance is owned by Enbridge Income Fund Holdings Inc. (50%) and Veresen Inc. (50%). http://www.alliancepipeline.com/AboutUs/OurCompany/Pages/Ownership.aspx1

Aux Sable is owned 42.7% by Enbridge, 42.7% by Veresen, and 14.6% by Williams. http://www.auxsable.com/top-navigation/about-us/ownership

[6] Aux Sable owns the Channahon NGL Extraction & Fractionation Facility:

> The facility is located in Channahon, Illinois, about 50 miles southwest of Chicago near the eastern terminus of the Alliance pipeline. Since commencing operations in December 2000, ASLP [Aux Sable Limited Partnership] has processed over 7.2 trillion cubic feet of natural gas and has produced over 12 billion gallons of specification NGL products. The facility is capable of processing 2,100 million cubic feet per day of natural gas and can produce approximately 107,000 barrels per day of specification NGL products. **All of the gas delivered via the Alliance Pipeline is processed at ASLP's Channahon NGL Facility.**

http://www.auxsable.com/top-navigation/our-business/u-s-operations (emphasis added).

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Another Alliance affiliate, Aux Sable Midstream owns and operates the Palermo Conditioning Plant and the Prairie Rose Pipeline in North Dakota:[7]

> The 80 mmcfd Palermo Conditioning Plant removes condensate from rich field gas prior to shipping to Alliance via the Prairie Rose Pipeline. The Prairie Rose Pipeline connects the Palermo Plant to the Alliance Pipeline, which delivers liquids-rich gas to Aux Sable's Channahon, Illinois facility for processing.[8]

In addition, Alliance receives North Dakota production via its Tioga lateral. As a result, North Dakota production which is transported by Alliance is exclusively processed by Aux Sable in Illinois because no one has been able to build a competing straddle plant.

Alliance has already announced that it is contracted full in part due to additional drilling in the Canadian Montney/Duverney resources, not due to incremental capacity dedicated to North Dakota. The dynamics of these resources have severe implications for North Dakota. In June 2014, Badlands was invited to participate in the Canadian Energy

[7] Aux Sable Midstream is also owned 42.7% by Enbridge, 42.7% by Veresen, and 14.6% by Williams. http://www.auxsable.com/top-navigation/about-us/ownership_

[8] http://www.auxsable.com/top-navigation/our-business/u-s-operations Aux Sable's web site also provides:

> Aux Sable's Palermo Conditioning Plant commenced operation in February 2010 and is located 1.5 miles south of US Highway 2 on 74th Ave NW, near Palermo, North Dakota. The Plant receives gas from four gas gathering systems servicing nearby Bakken shale oil/gas production areas. The plant is designed to remove the heavier hydrocarbon compounds while leaving the majority of the natural gas liquids in the rich gas delivered into the Prairie Rose Pipeline, which is then delivered onto the Alliance Pipeline. The gas is eventually processed at Aux Sable's Channahon Fractionation and Extraction Facility. Aux Sable Midstream has constructed a Natural Gas Liquids truck unloading facility at its Palermo Conditioning Plant. The NGL mix will be injected into the Palermo Plant/Prairie Rose Pipeline System for delivery at Aux Sable's Channahon, Illinois Facility. The Truck Unloading facility started operations in July 2012.

Id.

Research Institute ("CERI") conference in Calgary and, in large part because of the Montney/Duverney resources, all participants invariably agreed that Canada needs one or two new crackers to deal with all of the ethane coming online from the relatively new Montney and Duverney basins. However, no new "crackers" are currently planned. CERI then released an official report showing that there may be as much as 350,000 barrels per day of additional ethane production with no downstream use by 2020. Inevitably, this additional supply will find its way into the Alliance pipeline system and may restrain the ability of North Dakota producers to inject their rich gas into Alliance.

D. PROCEDURAL HISTORY

1. Alliance's Proposed Tariff Revisions

On May 29, 2015, Alliance, pursuant to NGA section 4, 15 U.S.C. § 717c and Part 154 of the FERC's regulations, filed revised tariff records that proposed a number of changes, most notably the removal of Authorized Overrun Service and crediting revenue from interruptible transportation service. But the proposed changes included other matters too, most notably the following addition to Section 20.1 of the General Terms and Conditions of Alliance's FERC tariff:

> Shipper warrants to Transporter that for all Shipper's Gas that is received by Transporter from Shipper at the Interconnect with **Alliance Pipeline Limited Partnership Receipt Point** and that is subject to a grant to **Aux Sable Liquid Products LP** of an option to extract and take title to all non-methane hydrocarbon constituents contained in such Gas, Shipper will be party to an **Extraction Agreement**.

(Emphasis added.). The bold terms are all defined in Alliance's FERC Gas Tariff.

Alliance Pipeline Limited Partnership ("Alliance Canada") is an upstream transporter and affiliate of Alliance.[9] Alliance Canada requires shippers, as a condition to transportation, to grant Aux Sable the option to extract and purchase natural gas liquids ("NGLs").[10] As a result, **all** gas currently received at the interconnection with Alliance Canada is subject to an Extraction Agreement.

Alliance's FERC Gas Tariff defines an "Extraction Agreement" as

> "a contract executed between a Shipper and Aux Sable whereby shipper grants to Aux Sable the **sole and exclusive** right to extract and take title to any non-methane hydrocarbon constituents contained in Shipper's Gas and which obligates Shipper to require any temporary or permanent assignment of capacity to be made expressly subject to such contract.[11]

Thus, when read together, Alliance Canada requires all shippers to enter into an **exclusive** extraction agreement with its affiliate, Aux Sable; the FERC tariff of Alliance reinforces this shipper obligation by defining the extraction agreement between a shipper and Aux Sable as **exclusive**; and revised GT&C Section 20.1 would require shippers to warrant that all gas transported by Alliance Canada is subject to an **exclusive** extraction agreement with Aux Sable, even if the US shipper did not receive service from Alliance Canada.

2. FERC Proceedings

[9] As noted above, Alliance Canada and Alliance are owned by the same companies. In addition, Alliance Canada and Alliance have the same officers. The Canadian and U.S. pipelines are operated as one system.

[10] *See* Alliance Canada's Firm Transportation Service Agreement, Article 5 & Schedule C. A Copy of Article 5 and Schedule C.

http://www.alliancepipeline.com/Business/Regulatory/Pages/TariffCDN.aspx

[11] Alliance FERC Gas Tariff, GT&C § 1 (emphasis added).

Following Alliance's May 29, 2015 tariff filing, several parties, including Badlands, intervened. On June 30, 2015, the FERC issued an order establishing an evidentiary hearing to address concerns with the Alliance's proposed tariff filing.[12] Various parties filed rehearing requests of the June 30 Order. In addition Badlands filed several pleadings responding to Alliance's claims Aux Sable's exclusive processing rights were not at issue.[13] On November 19, 2015, FERC issued a "Rehearing Order," which among other things confirmed that issues involving Alliance and the exclusive processing arrangement with its affiliate (Aux Sable) were set for hearing.[14]

Subsequently, a presiding administrative judge issued a procedural schedule, while on a separate track informal settlement negotiations commenced. On December 18, 2015, the Commission filed a motion to intervene, which was granted by the presiding on January 6, 2016. As a result, the Commission is a party to Alliance proceeding, with full rights to participate as it desires.

At this juncture, the parties and FERC staff have begun to conduct discovery. In addition, several settlement conferences have been held. But, there is no settlement agreement, not even an agreement in principle, not on transportation rates, nor several service issues, including the "Badlands issue." Any representation to the contrary is patently false.

IV.
THE EXCLUSIVE PROCESSING ARRANGEMENT BETWEEN ALLIANCE AND ITS AFFILIATE, AUX SABLE, IS ILLEGAL FOR SEVERAL REASONS

[12] Alliance Pipeline L.P., Docket No. RP15-1022-000, 151 FERC ¶ 61,271 (2015) ("June 30 Order").

[13] Copies of Badlands' FERC pleadings are attached as Exhibit C.

[14] Alliance Pipeline L.P., Docket No. RP15-1022-001, 153 FERC ¶ 61,195, PP 66-67 (2015) ("Rehearing Order").

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As noted above, two corporate families (Enbridge and Veresen) own and control **both** the Alliance pipeline system (both the Canadian and American pipelines) and Aux Sable, which extracts and processes natural gas liquids in Illinois. **All** Alliance shippers (including North Dakota production) exclusively utilize Aux Sable for processing because no one has been able to build a competing straddle plant. This exclusive processing arrangement between the pipeline and its affiliate is unlawful for the following reasons:

(1) It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable.

For the same reasons, is also anticompetitive. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize."

(2) FERC has held that an exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

A. THE EXCLUSIVE PROCESSING ARRANGEMENT IS UNDULY DISCRIMINATORY AND ANTICOMPETITIVE

The Alliance/Aux Sable corporate family requires pipeline shippers to grant Aux Sable an exclusive right to process all gas transported by the pipeline. This confers an undue preference on Aux Sable and unduly discriminates against other processors.

The NGA prohibits rates, charges or classifications that are unduly preferential or unduly discriminatory. 15 U.S.C. §717c(b); *see also* 18 C.F.R. §284.7(b) (requiring nondiscriminatory access). Undue preference and undue discrimination are two sides of the same coin. In essence, undue discrimination is an unjustified difference in treatment of similarly-situated customers.[15]

[15] *Transwestern Pipeline Co.*, Opinion No. 238-A, 36 FERC ¶ 61,175, p. 61,433 (1986).

Here, the two different classes of natural gas processors are (1) Aux Sable and (2) every other processer. The only meaningful difference between Aux Sable and other natural gas processors is that the owners of Alliance own more than 85% of Aux Sable. The Alliance corporate family has exercised its market power to vest Aux Sable with an undue preference, that is, by forcing shippers to provide Aux Sable with the exclusive right to process gas, the pipeline's affiliate is treated different from all other processors. Conversely, all unaffiliated processors are prevented from performing any services on gas transported by Alliance.

Furthermore, the exclusive processing arrangement is anticompetitive. The exclusivity arrangement evinces a commercial framework in which Alliance/Aux Sable control the interstate transportation and processing of natural gas. The Alliance corporate family seeks to prevent competition among natural gas processors by providing Aux Sable with the exclusive right to process gas on the Alliance system. The proposed change would extinguish competition on the Alliance pipeline system, thereby harming natural gas processors and shippers. Given that "discrimination which is anti-competitive in effect is presumptively undue,"[16] the exclusive processing arrangement is unduly discriminatory and must be rejected.

B. THE EXCLUSIVE PROCESSING ARRANGEMENT IS CONTRARY TO FERC'S INTERCONNECTION POLICY

Alliance's exclusive processing arrangement with its corporate affiliate violates the FERC's pipeline interconnection policy and GT&C Section 32 of Alliance's tariff. Specifically, in *Tennessee Gas Pipeline, L.L.C.*, the FERC rejected an exclusive processing

[16] *Electric & Water Plant Bd. of the City of Frankfort, Kentucky v. Kentucky Utils. Co., et al.*, 12 FERC ¶ 61,004, p. 61,008 (1980).

arrangement with a pipeline affiliate.[17] Tennessee's transmittal letter to the tariff filing in question noted: "Tennessee entered into a straddle agreement with its affiliate, El Paso Midstream Group Inc. ('Midstream). Under the straddle agreement, Midstream will have the exclusive right to construct one or more straddle plants . . . ."[18] The FERC rejected the exclusive processing arrangement and explained:

> Applying that standard here, we find that Tennessee's agreement with Midstream [the affiliated processor] violates this policy by declaring, *ab initio*, that Tennessee shall not consider any offers to interconnect other processing plants with the Rich Gas Line, regardless of their potential benefits to shippers, the general public, or even Tennessee itself.[19]

Tennessee never tried anything as bold as Alliance -- to embed references to the affiliate exclusivity arrangement in its tariff. As such, the Alliance situation is worse than Tennessee!

Alliance has manifest confusion on a related matter. It claims to have "a provision in its tariff that provides the opportunity for interconnection consistent with FERC's interconnection policy." Agreed. But Tennessee had a similar provision.[20] That is the point – the interconnection provision would be rendered meaningless, if processing could not be achieved after interconnection!

The FERC's reasoning in *Tennessee* is equally applicable to the instant proceeding. Therefore, the Alliance/Aux Sable existing exclusive processing arrangement must be rejected.

V.

[17] Docket No. RP13-464-000, 143 FERC ¶ 61,128, P 58 (2013).

[18] Tennessee's Transmittal Letter, Docket No. RP13-464-000 (Jan. 18, 2013).

[19] *Tennessee*, 143 FERC ¶ 61,128, P 59.

[20] 143 FERC ¶ 61,128 at P 58 ("The Commission finds that Tennessee's agreement with Midstream, which Tennessee has described to the Commission but not filed in this docket . . . also appears to violate Tennessee's own tariff language on interconnections.").

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BADLANDS SEEKS ONLY TO BE TREATED FAIRLY AND OPERATE ON A LEVEL PLAYING FIELD

In this proceeding, Badlands simply desires to be treated fairly and operate on a level playing field. To date, however, Badlands has not been treated fairly and is required to operate on playing field slanted in favor of the Alliance/Aux Sable corporate family. Specifically, when Badlands approached Alliance to explore an interconnection in North Dakota to facilitate construction of a straddle plant to extract ethane, Alliance essentially said, "Don't bother. Aux Sable has the exclusive right to extract NGLs transported on our system. Go talk to them." Badlands then talked to Aux Sable, but Aux Sable has no ethane it is willing to make available to Badlands at market rates.

At the Commission's work session on Tuesday, January 26, 2016, it was represented that Alliance was willing to "neutralize" its tariff and simply require that shippers enter into a processing agreement. Assuming *arguendo* that Alliance would be willing to cleanse its tariff of all direct and indirect references to Aux Sable; **that does not solve the problem**. The gravamen of the complaint is the already existing exclusivity forced upon shippers by Alliance in favor of its corporate affiliate, Aux Sable. Under the existing regime, the Alliance corporate family has required its shippers to enter into exclusive processing agreements with Aux Sable. Thus, changing the tariff, does not alter the fact that shippers have already granted Aux Sable has exclusive processing rights. More is needed if there is to be a level playing field. More is needed for ethane to be made available to Badlands. In short, more is needed for Badlands to be treated fairly.

Alliance and Aux Sable are each owned and controlled by the same two corporate families. All that is needed here is for the Alliance/Aux Sable corporate family to

1. allow Badlands to construct a straddle plant on the Alliance pipeline, upstream of Aux Sable's Channahon NGL extraction facility, so that Badlands could extract and pay a market price for a reasonable amount of ethane; or

2. sell at market price a reasonable amount of ethane to Badlands.

Either option would be fair and level the playing field.

VI.
THE PSC'S SIGNIFICANT INTEREST IN ALLIANCE AND BADLANDS

As a result of their unduly discriminatory and anticompetitive actions, the Alliance/Aux Sable corporate family is attempting to thwart the Badlands' development of a $4 billion plastics plant in North Dakota. Badlands' plant would be the largest private investment in the State's history, and Badlands is comprised of a majority (in number) of North Dakotan investors. A portion of the gas transported by Alliance is produced in North Dakota and should, therefore, be available to further North Dakota's interests. Against this backdrop, the Commission should support Badlands in the FERC proceeding and reject Alliance's attempts to confuse the issue by focusing on minor language changes to its FERC tariff.

~~Indeed, the North Dakota Century Code requires the Commission to support Badlands. First, NDCC § 49-02-16 requires the Commission to "exercise constant diligence in informing itself of the rates, rules, and practices of * * * transportation by pipeline of crude petroleum, gas, or other petroleum products . . . ." The Commission is now aware of the exclusive processing arrangement between Alliance and Aux Sable, as well as its adverse impact on Badlands and the State.~~

~~Next~~Indeed, NDCC § 49-02-17 requires that when the Commission discovers "that the rates charged by any public utility . . . on interstate business are unjust or unreasonable or that the rates, rules, or practices of such utility:

1. *Discriminate unjustly against the citizens, industries, or interests of this state*;

> 2. *Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states*; or
>
> 3. *Are* levied, laid, or *otherwise in violation of federal law, rulings, orders, or regulations*, **the commission immediately shall call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules, or practices.**

(Emphasis added). The Alliance/Aux Sable exclusive processing arrangement discriminates against (1) North Dakota citizens who are investors in Badlands, (2) the State's nascent polyethylene industry, which Badlands is spearheading, and (3) the State's interests in developing a value-added petrochemical industry. Similarly, the exclusive processing arrangement places Badlands' North Dakota investors, the State's nascent polyethylene industry, and the largest single private investment in the State's history at an unreasonable disadvantage compared to Aux Sable's processing in Illinois and competing polyethylene manufacturers in Illinois. Moreover, as noted above, the exclusive processing arrangement violates federal statutes and FERC rules: the exclusive processing arrangement is unduly discriminatory in violation of the NGA, is anticompetitive in violation of the Sherman Act, and violates the FERC's interconnection policy as articulated in *Tennessee*. As such, NDCC § 49-02-17 compels the Commission to urge the Alliance/Aux Sable corporate family to change the exclusive processing practice.

At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement. Stated differently, all that would be required at this stage of the FERC proceeding would be for the Commission to support Badlands in settlement discussions. This alone could help resolve the dispute.

If the settlement negotiations prove unfruitful, another North Dakota statute then comes into play. NDCC § 49-02-18 provides:

> Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination, unreasonableness, or unjustness, within a reasonable time, the **commission shall take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices.** If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

(Emphasis added). Accordingly, if the discriminatory exclusive processing arrangement employed by Alliance/Aux Sable is not resolved through settlement, then NDCC § 49-02-18 provides that "the commission "**shall** take the necessary action in appropriate proceeding to obtain relief . . . ." The word "shall" imposes an affirmative obligation on the part of the Commission. And the "appropriate proceeding" is none other than FERC Docket No. RP15-1022-000, where the unduly discriminatory, exclusive processing arrangement is currently being litigated.[21]

Finally, Badlands notes that NDCC § 38-08-03 provides: "Waste of oil and gas is prohibited." Badlands submits that pipeline and affiliated processing business models, which require North Dakota produced ethane to be shipped out of State for a loss, violates NDCC § 38-08-03, especially when Badlands is developing a polyethylene plant that would use North Dakota ethane as a feedstock and result in North Dakota producers "making money" on ethane sales, instead of "losing money" on out-of-state ethane sales.

VII.

[21] It is also worth noting that Badlands' proposed straddle plant would be subject to the Commission's siting jurisdiction. The Alliance/Aux Sable corporate family's exclusive processing arrangement creates conditions that prevent the Commission from exercising its jurisdiction. The Commission's involvement in Docket No. RP15-1022-000 could, therefore, be justified as protecting its jurisdiction over the siting of Badlands' straddle plant.

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PROPOSED RESOLUTION

In light of the above, Badlands urges the Commission to adopt the following resolution:

WHEREAS, the North Dakota Public Service Commission ("~~Commission") , with regard to investigation of interstate rates, "shall exercise constant diligence in informing itself of the rates, rules, and practices of common carriers engaged in: ... the transportation by pipeline of ... gas ...."~~commission"), recognizes that NDCC § 49-02-~~16;~~
17 requires it to take certain action ~~**WHEREAS,**~~ in the context of unreasonable rates, rules, and practices affecting interstate commerce:~~,~~ "Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the that the rates, rules, or practices of such utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;

2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states;

3. Are levied, laid, or otherwise in violation of federal law, rulings, orders, or regulations, the commission shall immediately call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules and practices." NDCC § 49-02-17;

WHEREAS, the Commission has filed motion to intervene (which has been granted) in a Federal Energy Regulatory Commission ("FERC") Gas Tariff proceeding initiated by Alliance Pipeline L.P. ("Alliance") , Docket No. RP 15-1022-000, such intervention based on the Commission's constitutional and statutory authority to investigate and take action necessary to protect citizens, industries, and interests of the state;

WHEREAS, there are industries, customers and potential business that may suffer significant impacts involving issues involving the Alliance tariff filing, in particular an exclusive processing arrangement between Alliance and its affiliate, Aux Sable Liquid Products, LP ("Aux Sable");

WHEREAS, as a public representative of retail customers and state interests of North Dakota, the Commission has a vital and direct interest in how the Alliance tariff operates and the exclusive processing arrangement between Alliance and Aux Sable;

WHEREAS, the State of North Dakota has a strong and vital interest in adding value to regional natural gas, promoting economic development and diversification of the state's economy, avoiding both resource and economic waste, growing and expanding both dry and wet gas value-added enterprises, and fostering a business climate that promotes access to ~~common carriers~~pipelines and processors of natural gas at fair market rates;

WHEREAS, Badlands NGLs, LLC ("Badlands"), has complained to the Commission, pursuant to NDCC § 49-02-17, that the Alliance tariff structure, exclusive processing arrangement between Alliance and Aux Sable, and associated contracts constitute a set of rules and practices that discriminate unjustly in favor Aux Sable, such that this affiliate enjoys an exclusive arrangement with Alliance and its shippers to the exclusion of Badlands; and further that this places the State of North Dakota at an unreasonable disadvantage with respect to other states downstream from North Dakota along the Alliance Pipeline who otherwise enjoy the benefits of processing and adding value to this interstate commodity; and finally, that such facts, if demonstrated with sufficient proof in these proceedings, may constitute a violation of federal law, rulings, orders, or regulations;

WHEREAS, based the investigation performed by the Commission to date, including the review of pleadings filed at FERC, Badlands' claims appear to be supported;

RESOLVED, that the Commission is empowered and obligated to continue participation in the FERC proceedings in Docket No. RP15-1022 (by virtue of its intervenor status) in order to encourage the full development and determination of the facts by FERC as alleged by Badlands, to help ensure a just and timely result for North Dakota and its citizens, whether by a settlement entered into by mutual consent of the parties, or by full and final adjudication, and to fully discharge the Commission's duties under the North Dakota Century Code as outlined above.

VIII.
CONCLUSION

Badlands is developing a new, $4 billion polyethylene manufacturing facility to be built in North Dakota and, as such, requires supplies of natural gas and ethane. The Alliance pipeline travels through North Dakota and transports a rich gas stream of methane and NGLs, including ethane. But Badlands has been unsuccessful in its attempts to obtain ethane transported by Alliance.

Alliance's FERC tariff requires every shipper to "warrant" – that is, unconditionally guarantee – that all gas received from Alliance's upstream affiliate (Alliance Canada) will be processed exclusively by Alliance's downstream affiliate (Aux Sable). Furthermore, **all** Alliance shippers have entered into agreements granting Aux Sable the exclusive right to extract and take title to all the shippers' NGLs.

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The exclusive processing arrangement between Alliance and its affiliate Aux Sable, and other issues, is the subject of an evidentiary hearing at FERC in Docket No. RP15-1022-000. There is no settlement agreement, not on rates or conditions of service; there is not even a settlement in principle.

At FERC, Badlands has established that the exclusive processing arrangement between Alliance and Aux Sable is illegal under federal law. It violates the NGA Sections 4 and 5 by unduly discriminating against unaffiliated processors and conferring an undue preference on Aux Sable. For the same reasons, is also anticompetitive. Furthermore, the exclusive processing arrangement with a pipeline's affiliate violates the FERC's pipeline interconnection policy.

The Commission is required by NDCC § 49-02-17 to take issue with the Alliance/Aux Sable exclusive processing arrangement it discriminates against North Dakotans who are investors in Badlands, disadvantages the State's nascent polyethylene industry interests in developing a value-added petrochemical industry. At this juncture, the Commission could comply with NDCC § 49-02-17 by simply stating in ongoing FERC settlement negotiations that the Commission takes issue with the Alliance/Aux Sable corporate family's exclusive processing arrangement.

Finally, any offer by Alliance to "neutralize" its FERC tariff (by removing direct and indirect references to Aux Sable) would be a hollow gesture, given that each and every Alliance shipper has entered into an extraction agreement, which provides Aux Sable with the exclusive right to extract and take title to all NGLs (including ethane).

WHEREFORE, Badlands respectfully requests that the Commission accept these Comments and approve the Resolution set forth above.

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Respectfully submitted,

William J. Gilliam

William J. Gilliam
CEO, Badlands NGLs, LLC

Dated: January 27, 2016

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LIST OF EXHIBITS

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EXHIBIT A

EXTRACTION AGREEMENT

THIS EXTRACTION AGREEMENT made effective this ___ day of __________, 20___

BETWEEN:

AUX SABLE LIQUID PRODUCTS LP, a limited partnership formed under the laws of Delaware, ("Aux Sable")

- and -

[Shipper], a [status] formed under the laws of [jurisdiction] (the "Shipper")

RECITALS:

A. Alliance Pipeline Limited Partnership ("**Canadian Transporter**") and Alliance Pipeline L.P. ("**U.S. Transporter**") (together, "**Alliance**") own a lateral and mainline pipeline system (the ""**Alliance System**"") designed to transport rich natural gas from Western Canada to the Chicago area.

B. Aux Sable has contracted with Alliance to perform heat content management services. Such contract services are provided by Aux Sable to Alliance through Aux Sable's extraction of NGLs contained in natural gas transported on the Alliance System prior to the delivery of such gas to systems downstream of the Alliance System.

C. Pursuant to Canadian Transporter's Tariff and the Canadian Extraction Agreement, Canadian Shipper has granted, assigned and relinquished the Extraction Rights to Aux Sable in relation to Canadian Gas, and any sale or transfer of the Canadian Gas is required to be subject to such grant.

D. Shipper desires to purchase or receive, from a Canadian Shipper, Canadian Gas that is subject to the pre-existing grant to Aux Sable of the Extraction Rights.

NOW THEREFORE, in consideration of the premises and the respective covenants and agreements of the Parties herein contained, the sufficiency of which is expressly acknowledged, the Parties agree as follows:

1. In this Agreement, including the recitals, words and phrases defined in the recitals have the meanings attributed to them therein, and the following words and phrases have the following meanings:

   "**Agreement**" means this Extraction Agreement.

"**Aux Sable**" means the Party referred to as Aux Sable, and includes (i) any of its successors or assigns in respect of this Agreement, and (ii) Aux Sable Extraction LP for the purposes noted in Section 10 hereof.

"**Canadian Gas**" means any natural gas transported by a Canadian Shipper on the Canadian Pipeline from time to time, or pursuant to, or in connection with, any Transportation Arrangement.

"**Canadian Extraction Agreement**" means the extraction agreement between Canadian Shipper and Aux Sable whereby Canadian Shipper has granted, assigned and relinquished the Extraction Rights to Aux Sable.

"**Canadian Pipeline**" means the Canadian Transporter's pipeline and associated facilities used to transport natural gas from various points in British Columbia and Alberta to a point of interconnection with the U.S. Pipeline owned by the U.S. Transporter at the Canadian-United States border, as the same may be modified from time to time.

"**Canadian Shipper**" means, with respect to any particular Transportation Arrangement, the entity which enters into any agreement or arrangement under which the shipper has the right to have transported on the Canadian Pipeline owned by the Canadian Transporter such natural gas as is delivered to the U.S. Pipeline on behalf of the Canadian Shipper under any Transportation Arrangement.

"**Extraction Facilities**" means either:

(a) the existing extraction and fractionation facilities located at the Alliance delivery header in Channahon, IL; or

(b) any other extraction and fractionation facilities owned and operated by Aux Sable

that are capable of extracting NGLs from natural gas transported on the Alliance System.

"**Extraction Rights**" means the sole and exclusive right to extract and take title to any NGLs;

"**NGLs**" means ethane, propane, normal butane, isobutane, pentanes plus and condensate, or any of them, or any mixture of any of them, and includes any other substances that may be incidentally recovered therewith on extraction from natural gas.

"**Parties**" means Aux Sable and the Shipper, and "Party" means one of the Parties.

"**Shipper**" means the Party referred to as Shipper, and includes any of its successors or assigns under any Transportation Arrangement.

"**Shipper's Gas**" means any natural gas transported on the U.S. Pipeline that is purchased or otherwise received from Canadian Shipper from time to time under, or pursuant to, or in connection with, any Transportation Arrangement.

"**Tariff**" means the terms and conditions under which U.S. Transporter will transport natural gas on the U.S. Pipeline pursuant to a Transportation Arrangement, as the same may be amended or approved from time to time by the Federal Energy Regulatory Commission or any successor.

"**Transportation Arrangement**" means any agreement or arrangement under which Shipper has the right to have transported on the U.S. Pipeline natural gas that is sourced from Canada and is subject to a pre-existing grant to Aux Sable of an option to extract and take title to all NGLs in such gas, and any assignment or capacity release thereof; provided, however, that if the U.S. Transporter should in the future start providing firm or interruptible transportation service on the U.S. Pipeline on a basis that does not involve a correlative grant of NGL extraction rights to Aux Sable for Shipper's Gas that is sourced in Canada and is subject to a pre-existing grant of an extraction option to Aux Sable, the term Transportation Arrangement as used herein will not include the new agreements or arrangements under which such new service is provided.

"**U.S. Pipeline**" means the pipeline system owned by U.S. Transporter that transports natural gas from a point of interconnection with the Canadian Pipeline at the Canada-U.S. border to the Chicago area, as the same may be modified from time to time.

2. Shipper hereby acknowledges that the Extraction Rights in relation to Shipper's Gas are subject to a pre-existing grant of such rights to Aux Sable. Shipper represents and warrants that it has done nothing to alienate, encumber or impair such grant of the Extraction Rights, and covenants and agrees that it will not at any time purport to grant to any other party any right to extract NGLs from any of Shipper's Gas or otherwise do anything that might interfere with or adversely affect the Extraction Rights conferred on Aux Sable or Aux Sable's ability to exercise those Extraction Rights. Any sale or transfer of Shipper's Gas will be subject to the pre-existing grant of Extraction Rights to Aux Sable. To the extent that Shipper is possessed of any Extraction Rights in relation to Shipper's Gas, Shipper hereby grants to Aux Sable the sole and exclusive right to extract and take title to any NGLs in Shipper's Gas.

3. If and whenever Aux Sable extracts NGLs from Shipper's Gas, it will deliver or cause to be delivered, for the account of Shipper, a quantity of make-up gas having a heating value equal to the amount by which the heating value of Shipper's Gas is reduced as a result of the extraction of such NGLs.

   The delivery of such make-up gas will be effected at such times and in such manner as to ensure that it does not:

(a) give rise to any energy imbalance between any of Shipper or U.S. Transporter; or

(b) affect, vary or alter the amounts payable by Shipper for transportation service under any Transportation Arrangement.

Aux Sable will be responsible for all royalties, overriding royalties, taxes, levies and other burdens applicable with respect to such make-up gas prior to or upon delivery thereof for the account of Shipper, and Aux Sable covenants and agrees that all such make-up gas will be free from any liens, encumbrances or adverse claims of any nature whatsoever at the time of delivery thereof for the account of Shipper.

Shipper acknowledges and agrees that the provision of make-up gas in accordance with this Section 3 will constitute full compensation for any NGLs extracted from Shipper's Gas pursuant to this Agreement.

4. Nothing in this Agreement will:

   (a) obligate Aux Sable to extract any NGLs from any of Shipper's Gas;

   (b) prevent Aux Sable from re-injecting any NGLs extracted from Shipper's Gas;

   (c) obligate Shipper to purchase or receive any natural gas on the U.S. Pipeline; or

   (d) prevent Shipper from extracting NGLs upstream or downstream of the Alliance System.

5. Aux Sable may construct additional or replacement Extraction Facilities on the Alliance System. In such case, Shipper agrees to do all such things as may be reasonably requested by Aux Sable to facilitate the exercise of Aux Sable's rights under this Agreement.

   Without limitation, Shipper hereby authorizes and directs U.S. Transporter:

   (a) to make all of Shipper's Gas available to Aux Sable at the inlet to any Extraction Facilities constructed in the United States, if and to the extent permitted by the terms of the Tariff; and

   (b) to receive all residue gas delivered by Aux Sable for the account of Shipper if and to the extent permitted by the terms of the Tariff.

6. Shipper hereby authorizes and directs U.S. Transporter to provide Aux Sable with all such information regarding Shipper's Gas as Aux Sable may from time to time reasonably request in connection with this Agreement.

7. Title to any NGLs extracted from Shipper's Gas at any Extraction Facilities will pass to Aux Sable upon extraction thereof. Shipper will be responsible for all royalties, overriding royalties, taxes, levies and other burdens applicable with respect to such NGLs prior to or upon the passing of title thereto to Aux Sable, and Shipper covenants and agrees that all such NGLs will be free from any liens, encumbrances

or adverse claims of any nature whatsoever at the time title thereto passes to Aux Sable.

8. If Shipper assigns any or all of its rights under any of its Transportation Arrangements, Shipper will:

   (a) in the case of a temporary assignment, ensure that such assignment is made expressly subject to the terms of this Agreement, such that the assignee's rights are subject to Aux Sable's rights hereunder; and

   (b) in the case of a permanent assignment, cause its assignee to execute and deliver to Aux Sable all such written assurances as may be reasonably requested by Aux Sable to confirm that such assignee is bound by the terms of this Agreement. Shipper will not assign any of its rights and obligations under any Transportation Arrangement except in compliance with the requirements of this Section 8, and Shipper hereby authorizes and directs U.S. Transporter to cooperate with Aux Sable in enforcing the requirements of this Section 8.

9. Aux Sable may assign any or all of its rights and corresponding obligations under this Agreement as security or otherwise. Shipper may only assign its rights and obligations under this Agreement in conjunction with a corresponding assignment of rights and obligations under its Transportation Arrangement.

10. Shipper acknowledges that Aux Sable has entered into this Agreement both on its own behalf and as agent on behalf of Aux Sable Extraction LP, a Delaware limited partnership, ("ASE") with respect to rights and obligations relating to the extraction of NGLs at ASE's Extraction Facility in Channahon, Illinois, and that the term "Aux Sable" shall be construed accordingly.

11. This Agreement will remain in full force and effect for the term of each Transportation Arrangement and a period of two (2) years after the expiry or termination of every Transportation Arrangement.

12. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may only be modified or amended by written agreement executed by both Parties.

13. No waiver of any right under or in respect of this Agreement will be effective unless in writing, and any waiver so given will extend only to the particular right so waived and will not limit or affect any rights with respect to any other or future matter. The failure of either Party to insist upon the strict performance of any provision of this Agreement, or to take advantage of any right hereunder, will not be construed as a waiver of any such provision or right.

14. The invalidity or unenforceability, for any reason, of any part of this Agreement will not prejudice or affect the validity or enforceability of the remainder.

15. Each of the Parties will from time to time execute and deliver all such further documents and perform all such further acts and things as may be reasonably required to more fully assure the carrying out of the intent and purpose of this Agreement.

16. This Agreement will be construed in accordance with and be subject to the laws of the State of Illinois, and the laws of the United States of America having application therein, without recourse to any laws governing conflict of laws. Neither Party will institute any action, suit or proceeding with respect to any matter arising under or out of this Agreement other than in a Court having jurisdiction in the judicial district of Chicago. In that regard, the Parties hereby irrevocably submit to the jurisdiction of such Court in the event of any such action, suit or other proceeding by the other Party.

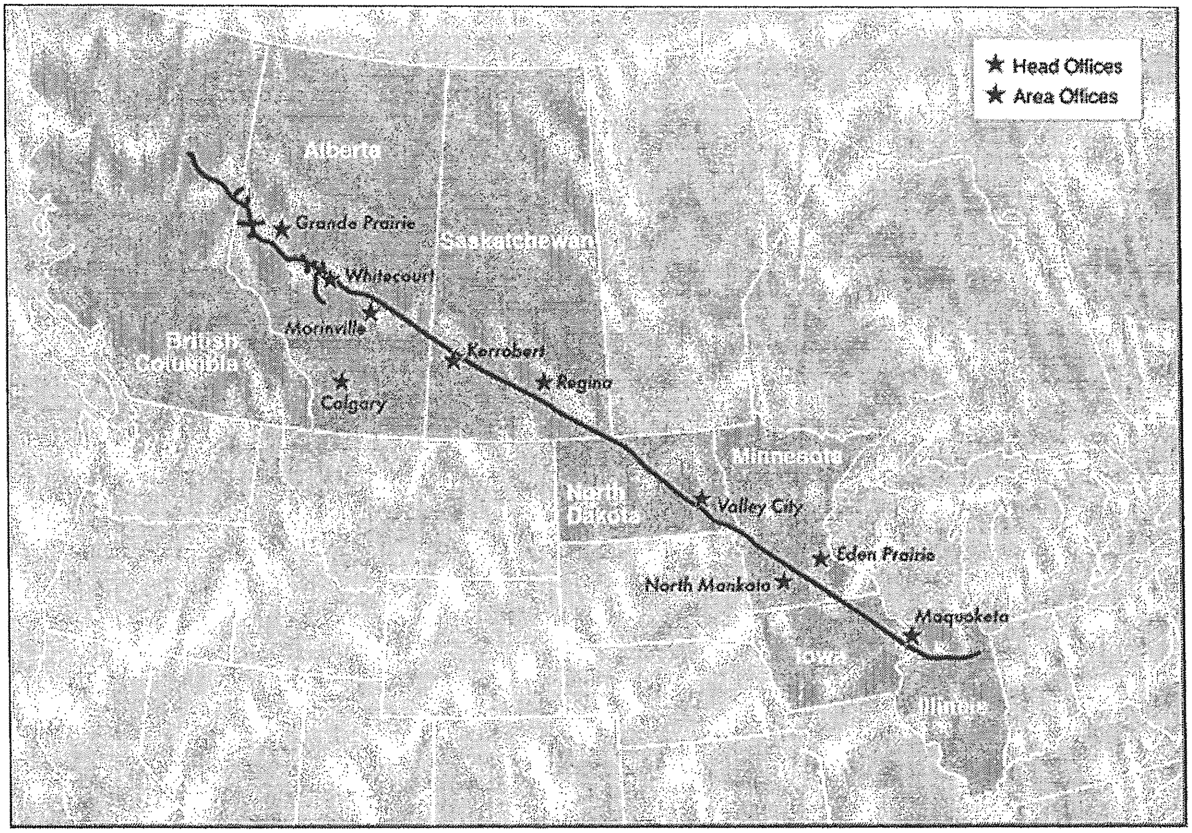
IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the day first above written.

AUX SABLE LIQUID PRODUCTS LP, by its Managing General Partner, Aux Sable Liquid Products Inc.	[SHIPPER]
Per: ______________________________	Per: ______________________________
Name:	Name:
Title:	Title:

Corrected Copy

EXHIBIT B

MAP DEPICTING ALLIANCE'S PIPELINE ROUTE



http://ips.alliance-pipeline.com/

Corrected Copy

Summary Report: Litéra® Change-Pro TDC 7.0.0.385 Document Comparison done on 1/29/2016 11:20:58 AM	
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Embedded Excel	0
Format Changes	0
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