

TABLE OF CONTENTS

	Page
I. UNDISPUTED MATERIAL FACTS	1
A. Plaintiff ETO Merged into Plaintiff ET and No Longer Exists	1
B. Plaintiffs ET and ETO Do Not Directly Own, Operate, or Receive Pipeline Revenue.....	3
C. Plaintiffs Base their Tortious Interference Claim on Two Transactions to Which ET and ETO Were Not Parties: the Construction Loan and the Bond Refinancing	5
1. Plaintiffs ET and ETO Were Not Parties to the Construction Loan	5
2. ET and ETO Are Not Parties that Receive Direct Benefits from the Bond Refinancing	6
II. LEGAL STANDARD.....	6
III. ARGUMENT.....	7
A. Count VIII (Tortious Interference) Fails as to ET and ETO Because They Lack Standing to Assert the Claim	7
1. Parent Companies Lack Standing to Sue for Alleged Injuries to Subsidiaries	8
2. ET and ETO Lack Standing to Assert Their Tortious Interference Claim, Which Arises from Alleged Injuries to ET's Current Subsidiaries and ETO's Former Subsidiaries	9
B. Count IX (Conspiracy) Fails as to ET and ETO Because They Lack Standing to Assert the Claim	10
IV. CONCLUSION.....	11
Exhibit A, Appendix of Entities.....	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aggie Investments GP v. Pub. Serv. Comm’n</i> , 470 N.W.2d 805 (N.D. 1991)	2
<i>All. Sports Grp., LP v. Walter R. Tucker Enters., Ltd.</i> , No. 3:20-CV-95 (FJS/ML), 2022 WL 1541276 (N.D.N.Y. May 16, 2022).....	9
<i>Black v. Abex Corp.</i> , 1999 ND 236, 603 N.W.2d 182 (N.D. 1999).....	7, 8
<i>Burris Carpet Plus, Inc. v. Burris</i> , 2010 ND 118, 785 N.W.2d 164 (2010)	11
<i>City of Bismarck v. McCormick</i> , 2012 N.D. 53, 813 N.Y.2d 599 (2012)	2
<i>Fla. State Bd. of Admin. v. Green Tree Fin. Corp.</i> , 270 F.3d 645 (8th Cir. 2001)	2
<i>In re Beck Indus., Inc.</i> , 479 F.2d 410 (2d Cir. 1973).....	9
<i>Kirk v. Schaeffler Grp. USA, Inc.</i> , No. 3:13-CV-5032-DGK, 2016 WL 81816 (W.D. Mo. Jan. 7, 2016), <i>rev’d on other grounds</i> , 887 F.3d 376 (8th Cir. 2018)	8
<i>Macquarie Bank Ltd. v. Knickel</i> , No. 4:08-CV-48, 2009 WL 10665539 (D.N.D. Mar. 26, 2009)	8, 9, 11
<i>Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau</i> , 2004 ND 60, 676 N.W.2d 752 (2010)	8
<i>Ochana v. Flores</i> , 199 F.Supp.2d 817 (N.D. Ill. 2002), <i>aff’d</i> 347 F.3d 266 (2003).....	2
<i>Olympic Invs., Inc. v. Burnett</i> , No. CIV. 06-2165, 2007 WL 4287809 (W.D. Ark. Nov. 30, 2007).....	9
<i>Perius v. Nodak Mut. Ins. Co.</i> , 2010 ND 80, 782 N.W.2d 355 (2010)	7
<i>Sec. Indus. & Fin. Mkts. Ass’n v. United States Commodity Futures Trading Comm’n</i> , 67 F. Supp. 3d 373 (D.D.C. 2014)	9

Rules

Fed. R. Evid. 2012
N.D. R. Civ. P. 567, 8
N.D. R. Ev. 201.....1, 2
N.D. R. Ev. 801(d)(2)2

¶1 The Greenpeace Defendants seek summary judgment on two claims Plaintiffs Energy Transfer LP (“ET”) and Energy Transfer Operating, L.P. (“ETO”) assert (Counts VIII and IX) because they lack standing to assert them. Neither entity is or was a party to the two transactions on which Plaintiffs base their Tortious Interference Claim (Count VIII), and they cannot pursue claims for current or former subsidiaries that are or were parties to those transactions. Neither entity owns, operates, or directly receives revenue from the Dakota Access Pipeline (“DAPL”) or ever owned property in North Dakota, so these entities cannot show the requisite direct harm to them (as opposed to their subsidiaries) caused by the property torts underlying the Conspiracy Claim (Count IX). Summary judgment against ET and ETO is therefore proper on these two Counts.¹

I. UNDISPUTED MATERIAL FACTS

A. Plaintiff ETO Merged into Plaintiff ET and No Longer Exists

¶2 Plaintiffs’ Second Amended Complaint (“SAC”) has three Plaintiffs, each organized under Delaware law and headquartered in Texas: (i) ET; (ii) ETO; and (iii) Dakota Access LLC (“Dakota Access”). SAC ¶¶ 11-14, Dkt. 100. Although ET and ETO were distinct legal entities, the SAC improperly conflates them under the name “Energy Transfer” and alleges “Energy Transfer” was the “project lead” and “primary builder” for the DAPL. SAC ¶¶ 11-13.

¶3 ETO no longer exists. On April 1, 2021, ETO merged into ET. *See* Decl. of Everett Jack (“Jack Decl.”) Ex. 1, at 1-5.²

¹ For the Court’s convenience, there is an Appendix of Entities attached as Exhibit A.

² Exhibit 1 is ET’s report of this merger, including the Merger Agreement, as filed with the Securities and Exchange Commission (“SEC”) on April 2, 2021. Pursuant to N.D. R. Ev. 201, the Greenpeace Defendants respectfully request judicial notice of this agreement, which is available on the SEC website at <https://www.sec.gov/Archives/edgar/data/1276187/000119312521104908/d123645dex21.htm>. On summary judgment, a court must take judicial notice of facts not subject to reasonable dispute, when requested by a movant who provides the necessary supporting information. N.D.

[¶4] Before the merger, ETO was a subsidiary of ET:



See Jack Decl. Ex. 2, at 1 (ET's 2016 Annual Report to SEC);³ Jack Decl. Ex. 3, at 6, 66 (corporate organizational chart provided by Midwest Connector Capital Company LLC submitted to U.S. Army Corps Of Engineers); [REDACTED]

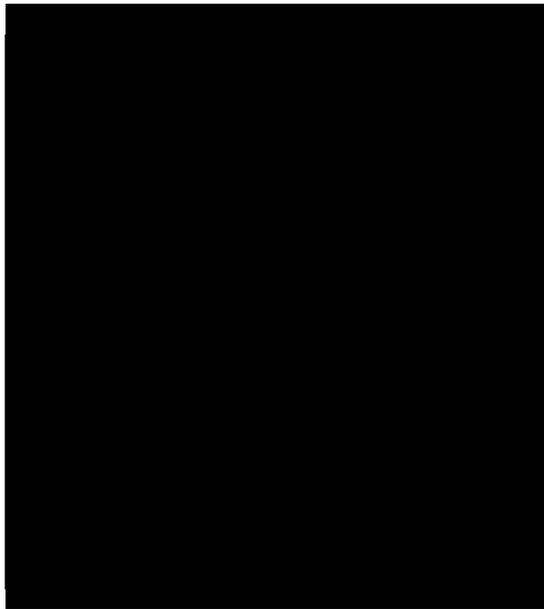


[¶5] Following the merger, Plaintiffs' organizational structure (simplified) is as

R. Ev. 201(b)-(d); *Ochana v. Flores*, 199 F.Supp.2d 817 (N.D. Ill. 2002), *aff'd* 347 F.3d 266. SEC filings are subject to judicial notice under N.D. R. Ev. 201, and may be introduced as a party admission under N.D. R. Ev. 801(d)(2). See *Fla. State Bd. of Admin. v. Green Tree Fin. Corp.*, 270 F.3d 645, 663 (8th Cir. 2001) (documents required to be filed with the SEC are subject to judicial notice under Fed. R. Evid. 201); see also *City of Bismarck v. McCormick*, 2012 N.D. 53 ¶¶ 11-12, 813 N.Y.2d 599, 603 (2012) (state judicial notice rule is based on federal rule); *Aggie Investments GP v. Pub. Serv. Comm'n*, 470 N.W.2d 805, 811-12 (N.D. 1991) (North Dakota courts look to persuasive federal authority when interpreting the rules of evidence).

³ Exhibit 2 is Energy Transfer Equity's Form 10-K Annual Report, as filed with the SEC on February 24, 2017. Pursuant to N.D. R. Ev. 201, the Greenpeace Defendants respectfully request judicial notice of this agreement, which is available on the SEC website at <https://www.sec.gov/Archives/edgar/data/0001276187/000127618717000023/0001276187-17-000023-index.html>. See n. 2, *supra*.

follows:



See [redacted] Jack Decl. Ex. 3, at 6, 66; [redacted]



B. Plaintiffs ET and ETO Do Not Directly Own, Operate, or Receive Pipeline Revenue

[¶6] Plaintiff Dakota Access is the party that “owns and operates DAPL[.]” SAC ¶ 14. As the owner/operator of DAPL—the pipeline that runs from North Dakota to Illinois—Dakota Access is the party that executes Transportation Service Agreements (“TSAs”) with shippers, and the party that receives payment for the shipment of oil in accordance with FERC tariffs. [redacted]

[redacted] Non-party Energy Transfer Crude Oil Company, LLC (“ETCOC”) plays the same role with respect to shipments of oil on its pipeline that runs from Illinois to Texas (“the ETCO Pipeline” and together with DAPL, “the Pipelines”).

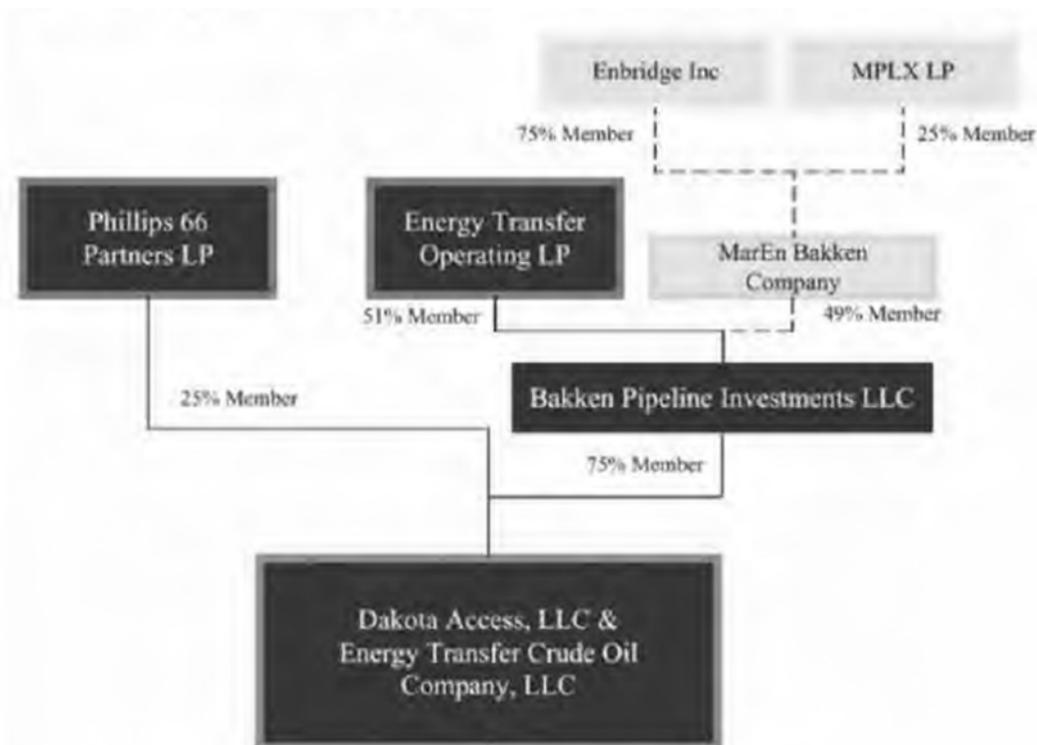


[¶7] Plaintiffs acknowledge in the SAC that ET and ETO are not involved in pipeline ownership or operations. For example, the SAC only identifies Dakota Access as the party which “owns the easements,” “was otherwise in possession of the land,” and “owns or was

otherwise in possession of machinery and construction equipment” at issue in this case. *Id.* ¶ 14. Plaintiffs do not allege ET or ETO owned any real property or equipment in North Dakota, and ET and ETO do not join Dakota Access’s property tort claims (Counts I-VI) against the Greenpeace Defendants. *Id.* ¶¶ 93-121.

¶8 Likewise, ET and ETO have no direct ownership interest in either of these pipelines. The ETCO Pipeline is owned and operated by nonparty Energy Transfer Crude Oil Company, LLC (“ETCOC”). ██████████ As the Pipelines’ owners and operators, Dakota Access and ETCOC—not Plaintiffs ET or ETO—entered the contracts with oil shippers and receive the resulting revenue from the Pipelines’ operation. ██████████

¶9 Plaintiffs ET and ETO have never had a direct ownership interest in Dakota Access or ETCOC either. Instead, before ETO merged into ET, it owned a 51 percent interest in yet another company, which in turn owns 75 percent of Dakota Access and ETCOC:



Jack Decl. Ex. 3, at 6, 66. After the merger, ET now holds the same indirect interest formerly held by ETO. Thus, ET does not (and ETO did not) directly own or receive any revenue from the Pipelines.

C. Plaintiffs Base their Tortious Interference Claim on Two Transactions to Which ET and ETO Were Not Parties: the Construction Loan and the Bond Refinancing

[¶10] Plaintiffs allege that Defendants interfered with their existing and prospective business relationships by (1) “disseminating false, misleading, and defamatory statements concerning Energy Transfer and Dakota Access’s business and DAPL” and (2) “supporting, funding, and committing acts of trespass and violence on Dakota Access’s land and property.” SAC ¶ 131.

[¶11] In particular, Plaintiffs claim that the Greenpeace Defendants’ statements and activities at Standing Rock interfered in two ways: they (1) caused some of the banks that participated in the loan for the construction of the Pipelines (the “Construction Loan”) to assign their interest to other banks,⁴ and (2) caused investors to lose interest and/or refuse participation in the issuance of bonds to refinance the Construction Loan (“Bond Refinancing”) on acceptable terms.⁵

1. Plaintiffs ET and ETO Were Not Parties to the Construction Loan

[¶12] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ SAC ¶¶ 79-88 (discussing loan divestment theory).

⁵ Jack Decl. Ex. 9, at 18 (Leathers Suppl. Rep.) (discussing bond refinancing theory).

2. ET and ETO Are Not Parties that Receive Direct Benefits from the Bond Refinancing

[¶13] Dakota Access and nonparty ETCOC refinanced the Construction Loan in 2019.

[REDACTED]

[¶14] [REDACTED]

[REDACTED]

[¶15] [REDACTED]

[REDACTED]

[REDACTED] There is no evidence of any direct harm caused to ET or ETO due to the alleged delay in the refinancing.

II. LEGAL STANDARD

[¶16] The Court must grant summary judgment “if the pleadings, the discovery and disclosure materials on file, and any declarations, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” N.D.R. Civ. P. 56(c)(3). A party opposing summary judgment must “set out specific facts showing a genuine

issue for trial.” N.D.R. Civ. P. 56(e)(2). The party “may not rely merely on allegations or denials in its own pleading,” *id.*, or:

upon unsupported conclusory allegations, but “must present competent admissible evidence by affidavit or other comparable means which raises an issue of material fact and must, if appropriate, draw the court’s attention to relevant evidence in the record by setting out the page and line in depositions or other comparable documents containing testimony or evidence raising an issue of material fact.”

Perius v. Nodak Mut. Ins. Co., 2010 ND 80, ¶ 9, 782 N.W.2d 355, 359 (quoting *Beckler v. Bismarck Pub. Sch. Dist.* 2006 ND 58, ¶ 7, 711 N.W.2d 172, 175). When a defendant moves for summary judgment “with respect to an issue on which the nonmoving [plaintiff] bears the burden of proof,” the defendant meets its burden simply by “‘showing’—that is, pointing out . . . —that there is an absence of evidence to support the nonmoving party’s case.” *Black v. Abex Corp.*, 1999 ND 236, ¶ 18, 603 N.W.2d 182, 188 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Rule 56 “allows the defendant to put the plaintiff to its proof,” and requires dismissal unless the plaintiff presents “competent admissible evidence which raises an issue of material fact.” *Id.* ¶¶ 19, 23, 603 N.W.2d at 188, 189.

III. ARGUMENT

A. Count VIII (Tortious Interference) Fails as to ET and ETO Because They Lack Standing to Assert the Claim

[¶17] The Greenpeace Defendants are also entitled to summary judgment against ET’s and ETO’s tortious interference claim because ET and ETO lack standing to assert them. A party is entitled to have a court decide the merits of a dispute only after demonstrating it has standing to litigate the issues before the court. *Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau*, 2004 ND 60, ¶ 11, 676 N.W.2d 752, 757. To have standing, plaintiffs ET and ETO must establish that they: (1) suffered some threatened or actual injury resulting from the putatively illegal action, and (2) are asserting their own legal rights and interests rather than the legal rights

and interests of third parties. *Id.* Because ET and ETO's claims rest solely on alleged injuries to subsidiaries, they cannot satisfy either requirement.

1. Parent Companies Lack Standing to Sue for Alleged Injuries to Subsidiaries

[¶18] “It is hornbook law that parent corporations are legal entities which are separate and discrete from any incorporated subsidiaries,” and “[a]s a result, they generally are not permitted to sue for injuries suffered by their subsidiaries with the courts concluding they are not the real parties in interest, or that they lack standing, or both. *Macquarie Bank Ltd. v. Knickel*, No. 4:08-CV-48, 2009 WL 10665539, at *8 (D.N.D. Mar. 26, 2009) (citations omitted); *see also see Kirk v. Schaeffler Grp. USA, Inc.*, No. 3:13-CV-5032-DGK, 2016 WL 81816, at *8 (W.D. Mo. Jan. 7, 2016) (“[I]t is black letter law that a parent corporation lacks standing to sue for injuries suffered by a subsidiary, even a wholly-owned subsidiary.”), *rev'd on other grounds*, 887 F.3d 376 (8th Cir. 2018); *All. Sports Grp., LP v. Walter R. Tucker Enters., Ltd.*, No. 3:20-CV-95 (FJS/ML), 2022 WL 1541276, at *2 (N.D.N.Y. May 16, 2022) (“It is black-letter law that one corporation cannot assert an affiliate’s legal rights.”) (citation omitted).

[¶19] “Where a parent corporation desires the legal benefits derived from organization of a subsidiary. . . . the parent must accept the legal consequences, including its inability later to treat the subsidiary as its alter ego because of certain advantages that might thereby be gained. In short the parent cannot ‘have it both ways.’” *In re Beck Indus., Inc.*, 479 F.2d 410, 418 (2d Cir. 1973) (citing *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (explaining corporate entity “will not be disregarded where those in control have deliberately adopted the corporate form in order to secure its advantages”); *cf. Sec. Indus. & Fin. Mkts. Ass’n v. United States Commodity Futures Trading Comm’n*, 67 F. Supp. 3d 373, 406 (D.D.C. 2014)

(reasoning that the shareholder standing rule “serves the noble function of preventing parent corporations from having their cake and eating it too”).

[¶20] In *Macquarie Bank*, for example, the court held that “a parent corporation may not pierce the corporate veil it set up for its own benefit in order to advance the claims of its subsidiary” and rejected the plaintiff’s attempt “to recover as damages any expenses that were incurred by” its wholly owned subsidiary. 2009 WL 10665539, at *9 & n.1; *see also Olympic Invs., Inc. v. Burnett*, No. CIV. 06-2165, 2007 WL 4287809, at *4, (W.D. Ark. Nov. 30, 2007) (finding “[p]arent corporations are separate entities from their subsidiaries and as such are unable to assert the interests of their subsidiaries” and dismissing claims brought by parent corporation that belonged to the subsidiary even though the two corporations shared the same officers). The same is true here.

2. ET and ETO Lack Standing to Assert Their Tortious Interference Claim, Which Arises from Alleged Injuries to ET’s Current Subsidiaries and ETO’s Former Subsidiaries

[¶21] ET and ETO impermissibly base their claims on damages allegedly incurred by their indirect subsidiaries, rather than their own legal rights or injuries. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Likewise, all of the alleged injuries, if any, were suffered by Dakota Access or nonparties and not by ET or ETO.

[¶22] **Construction Loan:** Plaintiffs’ tortious interference theory based on the Construction Loan arises from the rights and supposed injuries of the parties to the loan: Dakota Access and ETCOC. ET and ETO were not parties to the Construction Loan, had no relevant rights or obligations under the Construction Loan, and therefore cannot show any injury they incurred directly in connection with that Loan.

[¶23] **Bond Refinancing:** ET and ETO’s tortious interference theory based on the Bond Refinancing fails for the same reason. In that transaction, MCCC issued bonds to refinance the Construction Loan entered by Dakota Access and ETCOC. Although Dakota Access claims that delaying the refinancing increased borrowing costs for *Dakota Access and ETCOC*, Plaintiffs cannot prove the requisite direct impact on ET or ETO.

[¶24] Because ET and ETO do not base their claims on its own rights or injuries, the Greenpeace Defendants are entitled to summary judgment on ET’s and ETO’s tortious interference claim.

B. Count IX (Conspiracy) Fails as to ET and ETO Because They Lack Standing to Assert the Claim

[¶25] “Civil conspiracy is: a combination of two or more persons acting in concert to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another and an overt act that results in damages.” *Burriss Carpet Plus, Inc. v. Burriss*, 2010 ND 118, ¶ 42, 785 N.W.2d 164, 179 (quoting *Peterson v. N.D. Univ. Sys.*, 2004 ND 82, ¶ 27, 678 N.W.2d 163, 174). Here, Plaintiffs must prove there was an “agreement” among the Defendants to “inflict a wrong against” Plaintiffs in the form of trespass, conversion, nuisance, or providing substantial assistance for any of those torts. *Burriss Carpet*, 2010 ND 118, ¶ 42, 785 N.W.2d at 179. As with the underlying tort claims, Plaintiffs must prove that these property torts caused them direct harm. *Id.*; see also *Macquarie*, 2009 WL 10665539, at *8 (denying plaintiff leave to amend to add property damage tort claim arising from injury to subsidiary).

[¶26] ET and ETO cannot prove any such direct harm because neither entity owned any real or personal property in North Dakota. They cannot bring claims on behalf of subsidiaries, so

the Greenpeace Defendants are entitled to summary judgment on ET's and ETO's civil conspiracy claim.

IV. CONCLUSION

[¶27] For all these reasons, the Greenpeace Defendants respectfully request that this Court grant summary judgment on Plaintiffs ET's and ETO's Tortious Interference (Count VIII) and Civil Conspiracy (Count IX) claims.

Dated: April 12, 2024

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EXHIBIT A

APPENDIX OF ENTITIES

The following is a list of entities and abbreviations used throughout this motion:

1. Plaintiffs

Dakota Access LLC (Dakota Access). Owner/operator of the Dakota Access Pipeline and party to the Construction Loan.

Energy Transfer LP (ET): Indirect parent of Dakota Access and ETCOC (see below), and successor and former parent to ETO.

Energy Transfer Operating, L.P. (ETO). Dissolved entity that was formerly an indirect parent of Dakota Access and ETCOC until it merged with ET.

2. Non-Parties

Energy Transfer Crude Oil Company, LLC (ETCOC). Owner/operator of ETCO pipeline and party to the Construction Loan.

Midwest Connector Capital Company LLC (MCCC). Subsidiary created by Dakota Access to issue \$2.5 billion in bonds for construction loan refinance. MCCC loaned the bond sale proceeds to Dakota Access (which then loaned a portion to nonparty ETCOC) to pay off the Construction Loan.

3. Pipelines

Dakota Access Pipeline (DAPL). Pipeline owned and operated by Dakota Access that runs from North Dakota to Patoka, Illinois.

Energy Transfer Crude Oil Pipeline (ETCO). Pipeline owned and operated by ETCOC that runs from Patoka, Illinois to Nederland, Texas.